RTA's policy is constitutional while the other is unconstitutional. Therefore, we must determine if the district court's preliminary injunction is an appropriate remedy.

The Supreme Court has held that "a governmental action will be upheld if there is a constitutional basis for the action, even if a possible unconstitutional factor also contributed to the government's decision." *Coleman v. Ann Arbor Transp. Auth.*, 947 F. Supp. 2d 777, 790 (E.D. Mich. 2013) (citing *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285-286 (1977)). While the Supreme Court's previous decisions on this point have typically involved alleged retaliation for protected First Amendment activities or affirmative action programs, the "distinction is immaterial." *Texas v. Lesage*, 528 U.S. 18, 21 (1999). For in these contexts the underlying basis is the same: "where a plaintiff challenges a discrete governmental decision as being based on an impermissible criterion and it is undisputed that the government would have made the same decision regardless, there is no cognizable injury warranting relief under § 1983." *Id.*

Here, Fisher's advertisement was rejected on two separate and independently sufficient bases: the ban on political candidate advertisements and the restriction on scornful advertisements. Hence, Fisher's advertisement would have been rejected for violating the ban on political candidate advertisements even if the restriction on scornful advertisements did not exist. For this reason, we hold that the district court's preliminary injunction is not an appropriate remedy.

IV. Conclusion

We reverse the district court's holding that RTA's advertising space constitutes a designated public forum, vacate the district court's preliminary injunction order, and remand for proceedings consistent with this opinion.

Applicant Details

First Name	**Daniel**
Middle Initial	**J.**
Last Name	**Willey**
Citizenship Status	**U. S. Citizen**
Email Address	**daniel.willey.2023@lawmail.usc.edu**
Address	**Address** Street **1120 South Grand Avenue, Apt. 2001** City **Los Angeles** State/Territory **California** Zip **90015** Country **United States**
Contact Phone Number	**4848929787**

Applicant Education

BA/BS From	**Lafayette College**
Date of BA/BS	**May 2019**
JD/LLB From	**University of Southern California Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90513&yr=2009**
Date of JD/LLB	**May 12, 2023**
Class Rank	**5%**
Law Review/ Journal	**Yes**
Journal(s)	**Southern California Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Ryo, Emily
eryo@law.usc.edu
(213) 740-3409

Morgan, Stephen
smorgan@lacourt.org
(661) 483-5774

Erman, Sam
serman@law.usc.edu
(213) 740-6372

This applicant has certified that all data entered in this profile and any application documents are true and correct.

DANIEL J. WILLEY
1120 S Grand Ave, Apt. 2001 • Los Angeles, CA 90015 • (484) 892-9787 • Daniel.Willey.2023@lawmail.usc.edu

June 7, 2023

The Honorable Juan R. Sanchez
United States District Court
for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

I am a 2023 graduate of the University of Southern California Gould School of Law and an enlisted member of the United States Navy Reserve, and I am writing to apply for a clerkship in your chambers for the 2024–2025 term. I graduated from Gould in the top 5% of my class and served as an Executive Senior Editor of the *Southern California Law Review*. This fall, I will begin working as an associate at Gibson, Dunn & Crutcher LLP in Los Angeles.

Please find enclosed my resume, transcript, writing sample, and three letters of recommendation. The letters of recommendation are from: Professor Sam Erman, who taught my Constitutional Law class; Professor Emily Ryo, who taught my Criminal Law class and served as my *Law Review* Note advisor; and the Honorable Stephen T. Morgan, for whom I externed during the summer of 2021.

I would welcome the opportunity to interview at your convenience. Please do not hesitate to contact me if you require further information. Thank you very much for your time and consideration.

Respectfully,

Daniel J. Willey

Daniel J. Willey

DANIEL J. WILLEY

1120 S Grand Ave, Apt. 2001 • Los Angeles, CA 90015 • (484) 892-9787 • Daniel.Willey.2023@lawmail.usc.edu

EDUCATION

University of Southern California Gould School of Law GPA: 3.98 (Top 5%)
Juris Doctor, Order of the Coif, May 2023

- Honors: *Southern California Law Review*, Executive Senior Editor
- High Honors Grades: Legal Writing II (Highest Grade); Criminal Law (Highest Grade); Property (Highest Grade); Criminal Procedure (Highest Grade); Taxation (Highest Grade); Secured Transactions (Highest Grade); Venture Capital (Highest Grade); Cyberlaw (Highest Grade); TV and Digital Media (Highest Grade)
- Activities: Military Law Students Association, Founder and President; First Generation Professionals, 3L Mentor; *Spotlight* Entertainment Law Journal, Chief Production Editor

Lafayette College GPA: 3.76
Bachelor of Arts, *magna cum laude,* German Language and Literature, May 2019

- Minor: Philosophy
- Honors: Delta Phi Alpha National German Honor Society; Rexroth Prize in German - Outstanding Senior Award; Rexroth Prize in German - Culture/Literature Studies Award; Dean's List
- Study Abroad: Culture and language immersion program in Bonn, Germany (May 2019–July 2019)

Defense Information School GPA: 4.00
U.S. Navy Basic Mass Communication Specialist Course, September 2017

- Honors: Distinguished Honor Graduate (highest overall GPA)

EXPERIENCE

Gibson, Dunn & Crutcher LLP Los Angeles, CA
Summer Associate May 2022–July 2022

- Researched and drafted memoranda for trial and appellate matters involving criminal white collar defense, contract law, land use, and local ballot measures. Drafted questions for and participated in the mooting of an attorney in preparation for a summary adjudication hearing. Attended depositions and oral arguments.

USC Gould School of Law Los Angeles, CA
Research Assistant to Professor Sam Erman May 2021–January 2022

- Researched issues regarding increasing diversity in and access to the legal profession.

Los Angeles Superior Court Los Angeles, CA
Judicial Extern for the Honorable Stephen T. Morgan May 2021–August 2021

- Researched and drafted statements of decision and bench memoranda for civil matters involving contract, property, tort, and employment law. Observed pretrial conferences, settlement negotiations, summary judgment hearings, bench trials, and jury trials.

Navy Office of Information West Hollywood, CA
Hollywood Liaison September 2020–January 2023

- Oversaw script and treatment review, provided rough cut feedback, and drafted and ensured adherence to Production Assistance Agreements. Facilitated all stages of the production process for various media projects.

United States Navy Reserve Multiple Locations
Mass Communication Specialist July 2016–Present

- Draft and edit print and broadcast journalism for newspapers, magazines, television, and radio broadcast stations. Record professional still and video photography of military operations, exercises, and other events.
- Temporary active-duty deployment with Explosive Ordnance Disposal Mobile Unit 1 in Bahrain (2019).

ADDITIONAL INFORMATION

Languages: Fluent in German, basic proficiency in Spanish
Security Clearance: Secret Security Clearance (expires October 2026)
Interests: Brazilian Jiu-Jitsu, guitar, weightlifting, hiking, audiobooks

UNIVERSITY OF SOUTHERN CALIFORNIA
OFFICIAL ACADEMIC TRANSCRIPT

OFFICE OF THE REGISTRAR
LOS ANGELES, CA 90089-0912
(213) 740-7445

STUDENT NAME	STUDENT NUMBER	DATE	PAGE
Willey, Daniel, J.	7968-1937-05	06-09-2023	1 of 4

NOTE: PHOTOCOPIES ARE NOT TO BE CONSIDERED OFFICIAL TRANSCRIPTS.THE REGISTRAR'S SEAL AND SIGNATURE APPEAR ON THE FIRST PAGE.

ISSUE TO:

CONTROL #: 000002388290

RAISED SEAL NOT REQUIRED

This transcript is not valid without the university seal and the signature of the Registrar. A raised seal is not required.

Frank Chang
Registrar

Current Program of Study

02/13/2020	Juris Doctor	Law
02/13/2023	Graduate Certificate	Business Law
02/08/2023	Graduate Certificate	Media and Entertainment Law

USC Cumulative Totals

	Units Attempted	Earned	Available	GPA Units	Grade Points	GPA
Law	89.0	89.0	89.0	67.0	266.80	3.98

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STUDENT NAME	STUDENT NUMBER	DATE	PAGE
Willey, Daniel, J.	7968-1937-05	06-09-2023	2 of 4

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Fall Semester 2020 (08-17-2020 to 12-16-2020)

LAW-530	CR	1.0	Fundamental Business Principles
LAW-503	3.8	4.0	Contracts
LAW-509	3.5	4.0	Torts I
LAW-502	3.6	4.0	Procedure I
LAW-515	3.7	3.0	Legal Research, Writing, and Advocacy I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	15.0	54.70	3.64

Spring Semester 2021 (01-11-2021 to 05-14-2021)

LAW-516	3.8	2.0	Legal Research, Writing, and Advocacy II
LAW-508	4.0	3.0	Constitutional Law: Structure
LAW-507	4.1	4.0	Property
LAW-505	3.7	3.0	Legal Profession
LAW-504	4.2	3.0	Criminal Law

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
15.0	15.0	15.0	59.70	3.98

Summer Semester 2021 (05-19-2021 to 08-10-2021)

LAW-781	CR	4.0	Externship I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
4.0	4.0	0	0	0.00

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Willey, Daniel, J.	7968-1937-05	06-09-2023	3 of 4

NOTE: PHOTOCOPIES ARE NOT TO BE CONSIDERED OFFICIAL TRANSCRIPTS.THE REGISTRAR'S SEAL AND SIGNATURE APPEAR ON THE FIRST PAGE.

Fall Semester 2021 (08-23-2021 to 12-15-2021)

LAW-768	CR	1.0	Law Review Writing
LAW-709	3.6	2.0	Contract Drafting and Negotiation
LAW-772	4.2	3.0	Intellectual Property
LAW-654	4.3	2.0	Television and Digital Media (Business and Legal Issues)
LAW-603	4.0	4.0	Business Organizations
LAW-648	CR	1.0	Topics in Entertainment Law (Spotlight)
LAW-767A	CR	1.0	Law Review Staff

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
14.0	14.0	11.0	44.40	4.03

Spring Semester 2022 (01-10-2022 to 05-13-2022)

LAW-768	CR	1.0	Law Review Writing
LAW-767B	CR	1.0	Law Review Staff
LAW-648	CR	1.0	Topics in Entertainment Law (Spotlight)
LAW-801	4.2	2.0	Venture Capital and Emerging Companies
LAW-694	4.3	2.0	Cyberlaw: Legal Issues Impacting Providers and Users of Inte
LAW-658	4.2	3.0	Mergers and Acquisitions
LAW-600	4.3	4.0	Taxation

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
14.0	14.0	11.0	46.80	4.25

Fall Semester 2022 (08-22-2022 to 12-14-2022)

LAW-642	4.1	3.0	Secured Transactions
LAW-769A	CR	3.0	Law Review Editing
LAW-608	CR	4.0	Evidence
LAW-607	4.0	3.0	Gifts, Wills, and Trusts

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
13.0	13.0	6.0	24.30	4.05

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NOTE: PHOTOCOPIES ARE NOT TO BE CONSIDERED OFFICIAL TRANSCRIPTS.THE REGISTRAR'S SEAL AND SIGNATURE APPEAR ON THE FIRST PAGE.

Spring Semester 2023 (01-09-2023 to 05-12-2023)

LAW-845	4.1	3.0	Negotiation Skills
LAW-685	CR	1.0	The Modern U.S. Supreme Court
LAW-769B	CR	3.0	Law Review Editing
LAW-602	4.3	3.0	Criminal Procedure
LAW-532	3.9	3.0	Constitutional Law: Rights

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
13.0	13.0	9.0	36.90	4.10

End of Transcript

UNIVERSITY OF SOUTHERN CALIFORNIA•UNIVERSITY OF SOUTHERN CALIFORNIA•UNIVERSITY OF SOUTHERN CALIFORNIA•

ACADEMIC TRANSCRIPT INFORMATION

NOTE: *The information that follows represents current University policies. Questions regarding historical University policies and/or transcript notations should be addressed to the Office of the Registrar. This document contains a number of security features. Further information or authentication can be obtained by calling the Office of the Registrar (213) 740-9230.*

COURSE CREDIT/UNIT VALUE
A semester unit is a credit of one hour per week for one semester (15 weeks in length).

COURSE NUMBERING AND CLASSIFICATION
The first digit of the course indicates the year level of the course. 000-preparatory courses; 100-first undergraduate year; 200-second undergraduate year; 300-third and fourth undergraduate years without graduate credit; 400-third and fourth undergraduate years with graduate credit for graduate students; 500-first graduate year; 600-second graduate year; and 700-third graduate year.

GRADING SYSTEM
The following grades are used: A, excellent; B, good; C, fair in undergraduate courses and minimum passing in courses for graduate credit. D, minimum passing in undergraduate courses; and F, failed. Additional grades include CR, credit; NC, no credit; P, pass; and NP, no pass. The following marks are also used: W, withdrawn; IP, in progress; UW, unofficial withdrawal; MG, missing grade; IN, incomplete; and IX, lapsed incomplete.

GRADE POINT AVERAGE (GPA) CATEGORIES/CLASS LEVEL
A system of grade points is used to determine a student's grade point average. Grade points are assigned to grades as follows for each unit in the credit value of a course. A, 4.0 points; A-, 3.7 points; B+, 3.3 points; B, 3.0 points; B-, 2.7 points; C+, 2.3 points; C, 2.0 points; C-, 1.7 points; D+, 1.3 points; D, 1.0 points; D-, 0.7 points; F, 0 points; UW, 0 points; and IX, 0 points. Marks of CR, NC, P, NP, W, IP, MG and IN do not affect a student's grade point average. There are four categories of class level and GPA: Undergraduate, Graduate, Law, and Other. UNDERGRADUATE is comprised of Freshman (less than 32 units earned), Sophomore (32 to 63.9 units earned), Junior (64 to 95.9 units earned) and Senior (at least 96 units earned). GRADUATE is comprised of any coursework attempted while pursuing a master's and/or doctoral degree. LAW is comprised of any coursework attempted while pursuing a Juris Doctor or Master of Laws degree. Other is comprised of any coursework attempted while not admitted to a degree program or coursework not available for degree credit.

CLASS RANK
The University of Southern California does not calculate or support a class rank for its undergraduate students. While most graduate programs do not rank students, requests for graduate student class rankings should be directed to the dean of the particular school in which the graduate degree was earned.

STUDENT GOOD STANDING
A student is considered to be in good standing if they are eligible to register for classes. Disciplinary good standing is determined by the Office of Community Expectations.

TRANSFER CREDIT
Coursework accepted from other institutions is summarized into undergraduate and graduate areas. The summary information includes the number of units and GPA. The transfer institution(s) and dates of attendance do not appear on the USC transcript.

GOULD SCHOOL OF LAW GRADING SYSTEMS
Beginning in Fall 2022, courses are graded numerically from 4.0 to 1.9, with letter-grade equivalents ranging from A to F. The grade equivalents are 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.1 (C-); 2.0 (D); and 1.9 (F).

From Fall 2012 through Spring 2022, courses were graded numerically from 4.4 to 1.9, with letter grade equivalents ranging from A+ to F. The grade equivalents are 4.4 to 4.1 (A+); 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.1 (C-); 2.0 (D); and 1.9 (F).

From Fall 2001 through Spring 2012, courses were graded numerically from 4.4 to 1.9, with letter grade equivalents ranging from A+ to F. The grade equivalents are 4.4 to 4.1 (A+); 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.0 (D); and 1.9 (F).

Prior to Fall 2001, the grading system consisted in numbers in a range from 90 to 65. A grade of 90 was equivalent to highest honors and was very rare; 89 to 85 high honors; 84 to 80, honors; 79 to 70, satisfactory; 69 to 66, unsatisfactory; and 65, failing.

OSTROW SCHOOL OF DENTISTRY GRADING SYSTEM
Students admitted to the Doctor of Dental Surgery program in Fall 1990 or later and students admitted to the International Student Program in Summer 1991 or later, are bound by the University's grading system (excluding plus/minus grades), which is detailed *above* under the heading "GRADING SYSTEM." Academic records for dentistry students who attended prior to the dates listed above are housed independent of the University's central record system. Contact the Ostrow School of Dentistry directly for this earlier academic record information.

KECK SCHOOL OF MEDICINE TRANSCRIPTS
Transcripts for medical students are housed independent of the University's central records system. Contact the School of Medicine directly for this academic record information.

LANGUAGE OF INSTRUCTION
English is the language of instruction at USC. All courses are taught in English with the exception of a few advanced language courses.

ACCREDITATION
The University of Southern California is fully accredited by the Western Association of Schools and Colleges. For additional professional accreditation information, please refer to the latest issue of Accredited Institutions of Postsecondary Education published by the American Council on Postsecondary Accreditation (COPA).

Rev.02/2023

June 08, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to enthusiastically recommend Daniel Willey, an exceptional and truly talented student of mine at the University of Southern California Gould School of Law who is currently applying for a judicial clerkship position at your chambers. Daniel was a student in my criminal law course (spring of 2021). My criminal law course is both lecture and discussion based, and participation is mandatory. Daniel immersed himself in the course materials, and he engaged deeply both during and outside the classroom discussions I have had with him. Daniel's analytical and writing skills are first rate. He received the highest grade in my class, and I was not surprised given his exceptional performance throughout the semester.

In class, Daniel was always attentive and prepared. He frequently volunteered to participate in discussions on difficult topics, asked thought-provoking questions, and made insightful contributions when called on. Daniel's passion for the study of law was self-evident, as he would consistently raise persuasive points and respectfully challenge his classmates to view issues from new perspectives. Daniel stayed after class most days to either seek further clarification or to simply continue conversations on class topics that he found interesting. He is intellectually curious, hard-working, and detail-oriented—qualities that make him stand out among his peers.

Equally importantly for your consideration, allow me to comment on Daniel as a person. Although I did not know it when I first began interacting with him, Daniel is an active member of the United States Navy Reserve. His experience in the Navy has made him focused, disciplined, and organized in ways that make him rise above others. I was truly impressed when I found that not only did Daniel finish his first year of law school in the top 10 percent of his class, he did so while working part-time for the Navy. That Daniel successfully juggled the rigors of law school (with all of the challenges of pandemic-induced virtual learning, no less) along with his obligations as a servicemember attests to his drive, maturity, and ability to overcome challenges. At the same time, Daniel has a personal demeanor that makes it difficult to detect this kind of intensity that defines him. He is friendly, outgoing, charismatic, and respectful. In addition to his legal studies and Navy obligations, he has continued to pursue his other passions, including music and athletics. He has played both guitar and piano for many years, and he even composes his own music. He is an avid weightlifter, swimmer, runner, hiker, and competitor in Mixed Martial Arts. In other words, he is the full package.

I am confident that Daniel will make an exceptional law clerk, and he has my highest recommendation. Please do not hesitate to contact me if you have any questions.

Sincerely,

Emily Ryo, JD, PhD
Professor of Law & Sociology
USC Gould School of Law

Emily Ryo - eryo@law.usc.edu - (213) 740-3409

The Superior Court
MICHAEL D. ANTONOVICH
ANTELOPE VALLEY COURTHOUSE
42011 4TH STREET WEST
LANCASTER, CALIFORNIA 93534
CHAMBERS OF
STEPHEN T. MORGAN
JUDGE

TELEPHONE
(661) 483-5774

September 14, 2021

Re: Letter of Recommendation for Daniel Willey

I write to recommend Mr. Daniel Willey for a Clerkship in your chambers. Two factors inform my recommendation: 1) Daniel's performance as an extern in my chambers in the Civil Division of the Los Angeles County Superior Court; and 2) my experience supervising and evaluating attorneys in the Army Reserve JAG Corps where I currently serve as a Lieutenant Colonel.

In my role as a Los Angeles County Superior Court Judge, I currently preside over an independent calendar court hearing unlimited civil jurisdiction matters from filing through jury trial. To help manage the more than 700 matters on my calendar, I heavily rely on one full-time licensed attorney and externs like Daniel to help prepare written opinions.

Prior to interviewing and then selecting Daniel for his externship, I reviewed his resume and immediately focused on his current position with the Navy Reserve where he serves as a liaison to Hollywood film production companies. Based on my sixteen years experience in the Army that includes two nine-month tours in Iraq, I deduced that Daniel was an individual who likely possessed an impressive intellect, sound judgment, and superior oral and written communication abilities because the Department of Defense does not entrust those positions to individuals who lack those qualities. Daniel's time in my chambers proved my deduction correct.

Daniel's arrival in my chambers coincided with the loss of my full-time research attorney and that provided him with the somewhat unique opportunity to draft an entire statement of decision for a recently completed bench trial. Without having witnessed the trial that involved technical real property issues and based only on the closing arguments that the parties submitted in memorandum format as well as the evidence admitted at trial, Daniel generated a seven-page opinion that I ultimately issued with few changes and that received no objections or requests for further findings from either counsel. Perhaps more remarkably, Daniel accomplished the task while working remotely throughout his entire externship because of COVID restrictions.

In short, I would likely hire Daniel today as my research attorney if he were a licensed attorney and highly recommend him for a Clerkship without reservation.

Respectfully,

Stephen T. Morgan
Superior Court Judge

June 08, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Daniel Willey for a position as a law clerk. I know Dan as a student from my spring first-year Constitutional Law: Structure course and as a research assistant. He is a thoughtful, hard-working, high achiever who has excelled here at the Gould School of Law. I feel fortunate to have had the opportunity to work with him, and I urge you to hire him as well.

Dan thrived under difficult circumstances in my constitutional law class. He enrolled during a semester when courses were held completely online as a result of the COVID epidemic. As a result, the natural in-person connections that students make as they pass between classes or gather for meals were unavailable. The esprit de corps that normally arises in the classroom was also largely missing in the online environment. As a result, many students became passive participants in class: turning off their cameras, responding to questions only when called upon, and focusing more on receiving what was on offer than on bringing critical intelligence to bear on it.

By contrast, Dan was an active and curious presence throughout the class. He regularly asked questions that clarified the issue under discussion by contemplating how it would operate in novel contexts. He was also an excellent listener, often framing his contributions in ways that built off what his colleagues had already said. In a year when many students felt isolated, Dan's "seeing" and "hearing" of his classmates worked wonders in terms of drawing others into the conversation.

I was also lucky to have Dan in class because he spoke so intelligently and measuredly about his military experience. My class touches on a variety of military and national-security themes, including overseas wiretapping, military detention, and the War Powers Act. Dan made two sorts of invaluable contributions to these discussions. First, he understood the structure and practices of the national security apparatuses in ways that I do not. He repeatedly made targeted comments informing the class of relevant context. At the same time, he took what I might term a sympathetically critical stance toward national security. He articulated in ways that I have rarely seen other students do the difficulties and importance of the tasks that the military, homeland security, and similar agencies face. But he also clearly expressed an understanding of the shortfalls of current approaches and the spaces that existed for improvements. These contributions enriched our in-class discussions in ways that I had never been able to achieve in prior years.

Two days from the class stand out as being the most memorable for me. One was when we began discussing the indefinite detention cases. Dan had a much more concrete sense than the other students of the many checks and of the extensive oversight that the military and similar officials face. He thus pushed back on arguments by the rest of the class that lack of closer Supreme Court oversight would mean no oversight at all. He also had a clear sense of the drawbacks of many alternative approaches, and so was able to pierce his peers' assumptions that better approaches would be easy to identify and implement.

The second class day that stands out is when we had a former general counsel to the Chairman of the Joint Chiefs of Staff as a guest speaker. Many of the students who opposed the military's detention policies struggled to frame hard questions, given the imbalance in expertise. Dan, who was more sympathetic to the military's approach, also asked the toughest questions.

Given Dan's success in class, it was no surprise that he aced the exam, earning a 4.0 (high A). His exam was well written, spotted the issues, and explained them clearly. It was truly excellent.

What impressed me even more was learning that he had received an A-level grade in every one of his courses in the Spring 2021 term, and that my award of high honors to him was actually the lowest grade that he received in a mandatory Black-Letter Law 1L course. In Criminal Law and Property Law he received the highest grade awarded in the class. He also received the highest grade award in his legal writing course. That it was "only" a 3.8 (A) was most likely an artifact of the strict curve and small number students in legal writing sections.

Dan's second-semester performance was particularly impressive because it showed his growth across his first year. In his first semester, Dan did quite well, earning all grades in the A range and receiving honors in all of his courses. Many students who performed so well would declare success and simply seek to stay the course. But Dan realized that he had not quite found his exam footing his first semester, and so reflected and adjusted. The result is evidence both of his tremendous talent and of his resiliency and ambition.

None of this upward trajectory would be surprising to anyone who knew Dan. He joined the Navy while in college, where he immediately excelled. At Boot Camp he scored in the top 10% of new recruits. In response, the Navy enrolled Dan at its Defense Information School, where he then graduated with the second-highest score in the history of the program. That achievement came despite a major loss in his life – the sudden and unexpected death of his closest friend the day before final examination. Upon graduating, from the Navy's defense information school, Dan re-enrolled at Lafayette College. Classes were already well underway, but Dan made up the missed work while keeping on top of the current assignments. Indeed, he thrived. He made the dean's list, graduated magna cum laude, and won the Rexroth Prize as an outstanding senior.

Sam Erman - serman@law.usc.edu - (213) 740-6372

I was so impressed with Dan, that I offered him a position as a research assistant after my course ended. It was my good fortune that he accepted. There, he helped lead a small team of researchers who participated in my work as a member of the Mindsets in Legal Education research team. The goal of the research team is to identify ways to use social-psychological programs and empirical analyses to open the pipeline into legal practice for qualified individuals. We are currently building out a program to help state bar-exam authorities analyze how the choice of cut scores shapes the population of new lawyers that results each year.

Dan and his fellow RAs supported the effort to study bar exam cut scores through research into what data state bar-exam authorities already collect. That turns out to be a difficult question because many state bar-exam authorities collect information that they do not make public. To tackle it, the research team first identified what data was made public, then came up with strategies for learning what data existed that was not being shared. Here, they scoured old reports by state bar-exam authorities, explored bar-exam registration portals, and contacted bar-exam staff. The work is ongoing, and Dan and his colleagues have shown an impressive ability to pursue this complex project cooperatively and with very little oversight. They are proactive, intelligent, and diligent.

On a more personal note, Dan is a really great guy. He's a lively interlocutor whom I always look forward to engaging. He has worked well and cooperatively with a wide set of classmates, winning their respect and stepping into leadership roles. The Navy seems to have a similar assessment. They have made Dan their liaison to such Hollywood productions as Top Gun 2 and have had him serve in combat zones alongside foreign militaries.

I really hope you hire Dan. I would be happy to discuss Dan at greater length, and can be reached at this address, by email at stcerman@gmail.com, and on my cell phone any time at 734-717-2642. Good luck with your selection process. Thank you for taking the time to read this letter and to consider Dan's candidacy.

Sincerely,

Sam Erman
Professor of Law
USC Gould School of Law

DANIEL J. WILLEY
1120 S Grand Ave, Apt. 2001 • Los Angeles, CA 90015 • (484) 892-9787 • Daniel.Willey.2023@lawmail.usc.edu

June 7, 2023

The following writing sample is a statement of decision that I drafted for a bench trial during my judicial externship at the Los Angeles Superior Court. The trial involved a real property dispute between several California residents, and the statement of decision applies California property law to the facts of the case.

This version of the statement of decision is entirely my own work product. It was written without external feedback and has not been edited by any other individual. However, I have edited the decision to redact the parties' personal information. A final version of my statement of decision was ultimately issued by the court with minimal changes.

Please do not hesitate to let me know if I can provide any additional information regarding this writing sample.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, NORTH JUDICIAL DISTRICT

[REDACTED] MARTINEZ, an individual, Plaintiff, v. [REDACTED] ROMERO, an individual and As Trustee of the Romero Living Trust; and [REDACTED] ROMERO, an individual and As Trustee of the Romero Living Trust; and ALL PERSONS UNKNOWN, claiming any Legal or equitable right, title, estate lien, or Other interest in the properties described in The complaint adverse to Plaintiff's title, or Any cloud on Plaintiff's title thereto; and DOES One through Ten, inclusive, Defendants.	Case No. [00000-0000] TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION
[REDACTED] ROMERO, an individual and As Trustee of the Romero Living Trust, Cross-Complainants, v. [REDACTED] MARTINEZ; [REDACTED] PAGAN, Trustee of the Pagan Revocable Living Trust, dated July 24, 2008; [REDACTED] MONTEMAYOR; ALL PERSONS UNKNOWN, claiming any Legal or equitable right, title, estate lien, or Other interest in the properties described In the complaint adverse to Cross-Complainants' title, or any cloud on Cross-Complainants' title thereto; and ROES One through Ten, inclusive, Cross-Defendants.	

INTRODUCTION

The above-entitled action came on regularly for a bifurcated trial on liability on May 3, 2021, in Department A-14 of the Court, the Honorable Stephen T. Morgan, Judge, presiding. Plaintiff appeared through his attorney Fidelity National Law Group, by [REDACTED] Myers, and Defendants appeared through their attorney [REDACTED] Weeks. Cross-Defendants appeared through their attorney Reid & Hellyer, by [REDACTED] Katz. Oral and documentary evidence was introduced. Trial briefs and written closing arguments were received and considered. A Joint Stipulation Re Trial Issues was submitted setting forth the following issues for the Court's consideration:

1. Whether Plaintiff [REDACTED] Martinez ("Martinez") has an easement or should be granted an easement for vehicular and fire department ingress and egress to the Martinez property ("The Requested Martinez Easement"). The Requested Martinez Easement is from an existing private road commonly known as "Pagan Way" across an existing dirt road that is located on a portion of Defendant/Cross-Complainant [REDACTED] Romero's ("Romero") property.
2. Whether Romero has an easement or should be granted an easement for pedestrian ingress and egress across existing dirt paths over a portion of the Martinez property.
3. Whether Romero has an easement or should be granted an easement for vehicular and fire department ingress and egress from where Juniper Hills Road intersects Pagan Way and along Pagan Way over portions of the properties owned by Cross-Defendants [REDACTED] Pagan ("Pagan") and [REDACTED] Montemayor ("Montemayor").
4. Whether Romero owes Martinez damages for erecting a gate across Pagan Way.
5. Whether Martinez owes Romero damages for the destruction of vegetation on Romero's property.

Joint Stipulation Re Trial Issues, Pg. 2, Lines 5–19. In addition, Mr. Weeks asked the Court to decide whether Martinez has a prescriptive easement for an electrical line on Romero's property.

The Court, having heard and considered the testimony, evidence, and argument by counsel, and the matter having been submitted for decision on May 26, 2021, now issues the following Tentative Decision and Proposed Statement of Decision.[1]

FACTUAL BACKGROUND

The area of Los Angeles County at issue in this litigation comprises four separate parcels in Littlerock belonging to the parties as follows:

- Lots belonging to Pagan
  - Assessor's Parcel Numbers 3059-[xxxx], 3059-[xxxx]
  - [REDACTED] Juniper Hills Road
- Lot belonging to Montemayor
  - Assessor's Parcel Number 3059-[xxxx]
  - [REDACTED] Juniper Hills Road
- Lot belonging to Romero
  - Assessor's Parcel Number 3059-[xxxx]
  - [REDACTED] Juniper Hills Road
- Lot belonging to Martinez
  - Assessor's Parcel Number 3059-[xxxx]
  - [REDACTED] Juniper Hills Road

The following satellite image depicts the location of all four properties and of Juniper Hills Road, which acts as a northern boundary for these properties. The southern boundary for these properties is the Angeles National Forest. All four properties were essentially wiped clean of all vegetation by the Bobcat Fire in September 2020.[2] All four properties trace back to a common grantor and were created through the process of subdivision.

[1] At the close of testimony on May 4, 2021, the Court and counsel agreed to the following schedule: (1) counsel to submit closing briefs by May 26, 2021; (2) the Court to provide a Proposed Statement of Decision by June 30, 2021; and (3) counsel to have 30 days from June 30, 2021, to provide objections or requests for further findings.

[2] The Bobcat Fire was a wildfire that burned over 100,000 acres in the San Gabriel Mountains, both in and around the Angeles National Forest.

DISCUSSION

An "easement" is an "incorporeal, intangible and nonpossessory" property interest in land owned by another. *Union Pac. R.R. Co. v. Santa Fe Pac. Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 172. The possessor of an easement does not obtain ownership rights in the underlying property but is entitled to the "limited use or enjoyment" of the owner's land for a specific purpose. *Wolford v. Thomas* (1987) 190 Cal.App.3d 347, 355. This entitlement primarily involves the privilege of "doing a certain act on, or to the detriment of, another's property." *McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1174. Easements can be created through a variety of methods, including express grant or reservation, implication, necessity, or prescription. *Thorstrom v. Thorstrom* (2011) 196 Cal.App.4th 1406, 1417. A court may also grant a party an easement when the balance of the relative hardships to the parties favors the creation of such an easement. *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1008–09.

1. Whether Plaintiff Martinez and Cross-Plaintiff Romero have an easement or should be granted an easement for vehicular and fire department ingress and egress over portions of the properties owned by Cross-Defendants Pagan and Montemayor and Cross-Plaintiff Romero (as it relates to Plaintiff Martinez's access)

A. Express Easement Along Pagan Way

There is a recorded, express easement located to the east of Pagan Way that runs roughly parallel to Pagan Way. However, all parties have acknowledged that the recorded easement was originally misdescribed and that it was instead supposed to be located along Pagan Way. Expert witness R. Jones, a surveyor and civil engineer, also testified that the correct location of the easement was along Pagan Way. The express easement as it is currently recorded has never been used as a road, and the hilly topography of the location of the easement as recorded would make it difficult to be used as such. Romero acknowledges that, at minimum, the earth would have to be leveled for it to function as an easement, and there is evidence that there are permanent structures erected across the location of the express easement that would first have to be removed. In contrast, Pagan Way is a functional dirt road that has been used since the 1950s to access both the Romero and Martinez properties.

As the court in *Red Mountain, LLC v. Fallbrook Pub. Util. Dist.* (2006) 143 Cal.App.4th 333 held, the location of express easements may be relocated by mutual consent, which may be implied from the parties' use and acquiescence. In *Red Mountain*, an access easement was expressly created and recorded for a road that was later destroyed during renovation of the property. *Id.* at p. 352. The old road was replaced with a new road in a different location on the property. *Id.* Because the easement's beneficiary continuously used the new road for several years with the grantor's knowledge and permission, the court found that the parties had impliedly consented to relocate the access easement from the old road to the new road. *Id.* Here, this

Court thus finds that the location of the recorded easement was relocated to be along Pagan Way because the parties impliedly consented to this change through their continued use of the dirt road and their express acquiescence to the change. Because the location of the easement has changed from the recorded location, there can be no title to an easement in the recorded location.

Neither Montemayor nor Pagan, whose properties Pagan Way crosses, has objected to the existence or use of a permanent access easement along Pagan Way. Both parties have consented to the continued use of the easement by Romero and Martinez so long as the easement is not widened. After considering this evidence, the Court finds that both Romero and Martinez have an express easement for vehicular and fire department ingress and egress from where Juniper Hills Road intersects Pagan Way and along Pagan Way over portions of the properties owned by Pagan and Montemayor. Because there exists an express easement, the Court need not address whether either party acquired implied easements along Pagan Way under different theories.

B. Equitable Easement Across Romero Property

The Martinez property is landlocked, and the only way to currently access the property by vehicle is through use of a dirt road that connects to Pagan Way and crosses a small part of the southeast corner of the Romero property. This small corner of the Romero property is undeveloped save for the dirt road used to access the Martinez property. There is no evidence that Martinez's use of the corner of Romero's property would cause any substantial hardship or inconvenience to Romero. But if Martinez were to be forbidden from crossing Romero's property, Martinez would be unable to access his property, rendering it essentially worthless.

The 2nd District Court of Appeal acknowledged in *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003 that California courts may grant "equitable easements" even when the

requirements for a traditional form of easement are not met. Three conditions must be satisfied to grant an equitable easement: (1) the party seeking the easement must be innocent; (2) the property owner must not suffer irreparable injury if the easement were granted; and (3) the harm that would be caused to the party seeking the easement if the easement were denied must be greatly disproportionate to the harm that would be caused to the property owner if it were granted. *Id.* at p. 1009. In *Tashakori*, this "relative hardship test" was applied to a factually similar case, in which one neighbor was using a roadway that crossed a portion of a property owner's private land. *Id.* While the property owner would have suffered virtually no harm from the continued use of the roadway, the neighbor seeking the easement would have been irreparably harmed if their only means of accessing their property were denied. *Id.* at p. 1010. The court thus granted the neighbor an equitable easement allowing the continued use of the shared driveway that traveled across a portion of the property owner's land. *Id.* at p. 1014.

Here, Martinez had every reason to innocently believe that he had the right to cross Romero's property to reach his own. The road crossing Romero's property is the only available means of vehicular access to the Martinez property, and the road has been in use as such by both Martinez and the previous owner of the parcel, E. Obrien, for several years. Furthermore, granting Martinez an easement across a small, undeveloped, and otherwise unused corner of Romero's property would cause Romero virtually no harm. If an equitable easement were not granted by the Court, Martinez would lose vehicular access to his parcel altogether. The relative hardships balance heavily in Martinez's favor, and the Court thus holds that Martinez has an equitable easement to continue to use the existing dirt road to cross Romero's land to reach Pagan Way.

2. Whether Romero has an easement or should be granted an easement for pedestrian ingress and egress across existing dirt paths over a portion of the Martinez property

Romero argues that she should be granted a prescriptive easement to use the dirt paths crossing the Martinez property in order to access the Angeles National Forest. However, California Civil Code § 1009 states in relevant part:

> (a) The Legislature finds that:
>
> (1) It is in the best interests of the state to encourage owners of private real property to continue to make their lands available for public recreational use to supplement opportunities available on tax-supported publicly owned facilities.
>
> (2) Owners of private real property are confronted with the threat of loss of rights in their property if they allow or continue to allow members of the public to use, enjoy or pass over their property for recreational purposes.
>
> (3) The stability and marketability of record titles is clouded by such public use, thereby compelling the owner to exclude the public from his property.
>
> (b) Regardless of whether or not a private owner of real property has recorded a notice of consent to use of any particular property . . . *no use of such property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use, made by the owner thereof* . . . .

Cal. Civ. Code § 1009 (West 2021) (emphasis added). The 4th District Court of Appeal applied Civil Code § 1009 to a similar set of facts in *Bustillos v. Murphy* (2002) 96 Cal.App.4th 1277 and denied plaintiff Bustillos a prescriptive easement to access a network of trails on the undeveloped property of the defendant. Bustillos, like Romero, crossed the defendant's property for recreational uses, such as walking dogs and riding horses, which resulted in the creation of a network of trails. Just as Romero argues in her closing brief, Bustillos tried to argue that he was seeking a private easement, not a public

easement, and thus Civil Code § 1009 should not apply. However, the court held that Bustillos "did not have any use or interest in the property that is distinguishable from the public generally" that would make it a private easement. *Id.* at p. 1281. The same is true here, as Romero's interests in photographing nature, hiking, and walking her dog are indistinguishable from interests of the public generally. Romero relies on *Ditzian v. Unge*r (2019) 31 Cal.App.5th 738 to argue otherwise, but that court found that a plaintiff had a private easement only because the plaintiff was crossing a neighbor's property to access *the plaintiff's own property* on the other side. That court even emphasized that "merely passing through [the defendant's] property because it provides access to a public recreational area" would be indistinguishable from the interest of the public at large. *Id.* at p. 745. Here, Romero seeks an easement to access a public recreational area, and the legislature expressly intended to prevent this sort of access from ripening into a vested property right. Romero's request for an easement across Martinez's land to access the forest is thus barred by California Civil Code § 1009.

3. Whether Martinez has a prescriptive easement to use a buried electrical line on Romero's property

The finding of a prescriptive easement requires that the party seeking the easement "show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years." *Warsaw v. Chi. Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570. The use of another's property is open and notorious if it is sufficiently visible to provide actual or constructive notice of the use to the owner of the property. *Connolly v. McDermott* (1984) 162 Cal.App.3d 973, 977. A use is "adverse" if

it is done without permission from the property's owner. *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 450.

From approximately 1984 until the 2020 Bobcat Fire, an electrical line ran from a pole on Romero's property to power a water pump in a well house on Martinez's property. This continuous use of Romero's property was open and notorious, as the electrical pole was clearly erected on Romero's property and had aerial electrical lines running to it from Juniper Hills Road. There was also evidence that Romero had seen a conduit on the electrical pole entering the ground. Given these facts, Romero knew or should have known that such a conduit would have corresponding underground wires, and she admitted that she knew the pole did not power her own property. This usage was also adverse, as Romero also admitted that she never consented to this use of her property. The Court thus grants Martinez a prescriptive easement to continue to use the electrical pole and buried electrical line crossing Romero's property.

4. Whether Martinez and Romero owe each other damages

Because Martinez is granted an easement to cross Romero's property, Romero may not block Martinez's future access by erecting a gate across her property. Martinez is not entitled to damages for any denial of access in the past, however, because damages were not proven. And even if further evidence were to be presented, any such damages would likely prove inconsequential.

Romero is not entitled to damages for loss of any trees or vegetation because these alleged damages were also not sufficiently proven. Moreover, the property was ultimately wiped clean of all trees and vegetation by the Bobcat Fire.

CONCLUSION

Having considered the evidence, and for the foregoing reasons, the Court finds that both Martinez and Romero have an express easement for vehicular and fire department ingress and egress along Pagan Way over portions of the properties owned by Pagan and Montemayor. Martinez is granted an additional equitable easement to continue to use the existing dirt road crossing Romero's land to reach Pagan Way. The Court also grants Martinez a prescriptive easement to continue to use the electrical pole and buried electrical line that crosses Romero's property. Romero's request for an easement across Martinez's land to access the forest is denied. Neither Romero nor Martinez is entitled to damages. The Court renders a verdict for each party consistent with this opinion.

_____ _____

Date Stephen T. Morgan, Judge

Applicant Details

First Name	**Ashley**
Middle Initial	**N**
Last Name	**Williams**
Citizenship Status	**U. S. Citizen**
Email Address	**anw2059@nyu.edu**
Address	**Address** Street **111 Lawrence St. Apt 20F** City **Brooklyn** State/Territory **New York** Zip **11201**
Contact Phone Number	**4696670068**

Applicant Education

BA/BS From	**University of Texas-Austin**
Date of BA/BS	**May 2016**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Review of Law and Social Change**
Moot Court Experience	**Yes**
Moot Court Name(s)	**NYU Law Marden Moot Court Competition** **National BALSA Thurgood Marshall Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Chen, Elizabeth
elizabeth.chen@brooklaw.edu
718-780-7518
Archer, Deborah
deborah.archer@nyu.edu
212-998-6528
Kaufman, Emma
emma.kaufman@nyu.edu
212-998-6250

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to apply for a clerkship in your chambers beginning in 2024. I am a third-year student at New York University School of Law attending on a scholarship through the Filomen M. D'Agostino Scholarship for Civil Rights, Civil Liberties, and Justice.

At NYU, I have actively engaged in extracurricular activities that have enhanced my legal skills and contributed to my personal growth. As a member of the Black Allied Law Student Association and Trial Advocacy Society, I have gained valuable experience in advocacy, leadership, and fostering diversity within the legal profession. Further, I revived the NYU Native American Law Student Association (NALSA) chapter after nearly a decade of dormancy and now serve as its Chair, where I advocate for the rights of Native American students and organize impactful events.

I have also demonstrated my commitment to academic excellence and legal research. As a Staff Editor for the Review of Law and Social Change, I honed my writing and analytical skills while ensuring the publication of high-quality legal scholarship. Additionally, as a Research Assistant for Professor Deborah Archer, I conducted extensive research on the history of racial segregation in transportation infrastructure, producing well-written memoranda that contributed to the understanding of complex legal issues. While participating in the Civil Rights Clinic, I collaborated with project teams, conducted legal research, and drafted numerous memoranda. These experiences have strengthened my ability to analyze complex legal issues, provide insightful recommendations, and meet deadlines while maintaining attention to detail and organization.

I believe that my diverse background and personal experiences would significantly contribute to my qualifications for a clerkship in your chambers. As the first person in my family to attend college and as a Citizen of Cherokee Nation and a descendant of Cherokee Freedmen, I have overcome significant challenges and developed a deep appreciation for the law's impact.

I have attached a resume, transcripts, and a writing sample. Please let me know if any other information might be helpful. Arriving separately are three letters of recommendation from Professors Deborah Archer, Emma Kaufman, and Elizabeth Chen.

I would welcome the opportunity to interview with you, and I thank you for your consideration.

Respectfully,

Ashley Nicole Williams

ASHLEY NICOLE WILLIAMS

111 Lawrence St. Brooklyn, NY 11201• (469) 667-0068 • anw2059@nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW — **NEW YORK, NY**
Candidate for J.D., May 2024

Honors: Filomen M. D'Agostino Scholarships in Civil Rights, *Recipient*
Journal of Law & Social Change, *Staff Editor*

Activities: Native American Law Student Association, *Chair*
Black Allied Law Student Association, *Member*
Trial Advocacy Society Activity, *Member*
NYU Clerkship Diversity Program, *Participant*
Professor Deborah N. Archer, *Research Assistant*
Civil Rights Clinic, *Student*

UNIVERSITY OF CALIFORNIA LOS ANGELES — **LOS ANGELES, CA**
Master of Social Science — June 2018
Research: Inequitable outcomes in online home mortgage lending for Black and Brown borrowers

UNIVERSITY OF TEXAS AT AUSTIN — **AUSTIN, TX**
Bachelor of Business Administration: Canfield Business Honors Program, Finance — May 2016
Bachelor of Arts: African and African Diaspora Studies

Activities: Black Business Student Association, *President, Financial Director, Fundraising Chair*
Delta Xi Chapter of Alpha Kappa Alpha Sorority, Inc., *Membership Intake Chair, Treasurer*

Study Abroad: University of Cape Town, South Africa, Summer 2014

EXPERIENCE

ARNOLD & PORTER — **Washington, D.C.**
Summer Associate — May 2023-July 2023

- Conduct research and document review to prepare memoranda for projects in White Collar, Complex Litigation, and Appellate practice groups.

THE HONORABLE LESHANN DEARCY HALL, — **Brooklyn, NY**
US DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK — May 2022-August 2022
Judicial Intern

- Conducted research, produced memoranda, and presented findings to the Judge regarding legal matters including *pro se* rights post-trial and an employment law matter at the motion to dismiss stage.

JONES DAY — **Washington, D.C.**
SEO Summer Associate — June 2021-August 2021

- Completed successful assignments in Global Disputes, Tax, Financial Markets, and Government Affairs including two memoranda.
- Selected to travel to Laredo, Texas to support the Firm's pro bono efforts in assisting asylum seekers at the Texas border.

CENTER FOR PUBLIC POLICY PRIORITIES — **Austin, TX**
Policy Analyst and Advocate, *Economic Opportunity Team;* ***Program Lead,*** *Policy Leaders of Tomorrow Fellowship.* — August 2018-May 2021

- Drafted, secured sponsorship, and advocated for a bill to allow high scores on high school equivalency exams to count for state college readiness standards; signed into law June 2019.
- Co-led the advocacy effort to prevent Texans who default on student debt from losing professional licenses; signed into law June 2019.
- Awarded $500,000 dedicated grant funds to envision, develop, and execute a policy pipeline program for historically underrepresented students.
- Elected as lead negotiator for the workplace union's inaugural contract: piloted the creation of a 100+ page contract, engaged in 20+ rigorous negotiation sessions with management and their legal counsel, and secured agreement on significant improvements in workplace policy.
- Publications & Appearances: Texas Tribune Festival: *This Way Up: Higher Education Panel*; Texas Tribune Event: *Higher Ed & Social Mobility*; NPR Interview: *Why Texas Historically Black Colleges Receive Less Funding*; Peer-Reviewed Publication - Texas Education Review: *A Review of State Investment in Higher Education During the 86th Legislature.*

EAST AVENUE PROJECT ON SEGREGATION — **Austin, TX**
Research Analyst — January 2016-April 2016

- Conducted 50+ in-person surveys of current/previous residents of communities experiencing gentrification in Austin.
- Nominated by program director to present related findings of independent research at UT Austin Peace and Justice Summit to an audience of 75.

LEADERSHIP EXPERIENCE & AFFILIATIONS

SPONSORS FOR EDUCATIONAL OPPORTUNITY — **REMOTE**
SEO Law and SEO Catalyst Participant — August 2020 – August 2021

- Selected from a competitive applicant pool to engage in a rigorous curriculum focused on developing legal skills and career preparation.

TEXAS POSTSECONDARY ADVOCATES COALITION FOR EQUITY (TEXAS PACE) — **AUSTIN, TX**
Founder, Lead — October 2018-May 2021

- Founded a coalition of equity-focused advocates focused on promoting access to higher education for underrepresented populations.

INTERESTS: Instructor and student of hip hop and jazz dance, Portrait photography, Contemporary African American literature

Name:	**Ashley N Williams**
Print Date:	**06/11/2023**
Student ID:	**N18826272**
Institution ID:	**002785**
Page:	**1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Elizabeth J Chen			
Criminal Law	LAW-LW 11147	4.0	B
Instructor: Rachel E Barkow			
Torts	LAW-LW 11275	4.0	B+
Instructor: Christopher Jon Sprigman			
Procedure	LAW-LW 11650	5.0	B-
Instructor: Samuel Issacharoff			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Samuel Estreicher Zachary Dean Fasman			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Constitutional Law	LAW-LW 10598	4.0	B
Instructor: Melissa E Murray			
Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Elizabeth J Chen			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B
Instructor: Emma M Kaufman			
Contracts	LAW-LW 11672	4.0	B
Instructor: Liam B Murphy			

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Civil Rights	LAW-LW 10265	4.0	CR
Instructor: Baher A Azmy			
Corporations	LAW-LW 10644	4.0	B
Instructor: Ryan J Bubb			
Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	B+
Instructor: Geoffrey P Miller			
Orison S. Marden Moot Court Competition	LAW-LW 11554	1.0	CR
Teaching Assistant	LAW-LW 11608	2.0	CR
Instructor: Alba Raquel Morales			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	43.0	43.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Criminal Procedure: Post Conviction	LAW-LW 10104	4.0	A
Instructor: Emma M Kaufman			
Civil Rights Clinic Seminar	LAW-LW 10559	4.0	A-
Instructor: Deborah Archer Joseph Schottenfeld			
Civil Rights Clinic	LAW-LW 10627	3.0	A
Instructor: Deborah Archer Joseph Schottenfeld			
Supreme Court Simulation Seminar	LAW-LW 11112	3.0	A-
Instructor: Troy A McKenzie Jack L Millman			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	57.0	57.0

Staff Editor - Review of Law & Social Change 2022-2023

End of School of Law Record

Brooklyn Law School
ESTABLISHED 1901

June 12, 2023

RE: Ashley Williams, NYU Law '24

Your Honor:

Ashley Williams is an exceptional law student and will be an outstanding judicial clerk. I write to recommend her for a clerkship in the strongest possible terms. As Ashley's professor in the first-year Lawyering Program at NYU School of Law, I had an opportunity to observe Ashley both in class and in a variety of simulations that expose students to diverse professional and interpersonal skills. As a former law clerk, I know that Ashley possesses both the skills and the demeanor to be an asset to your chambers.

The Lawyering Program, a key part of the first-year JD curriculum at NYU, is a year-long, simulation-based course with approximately 28 students per class. In this course, students operate within small teams, critique each other's work, and receive detailed feedback on a range of skills, including conducting legal research and factual due diligence, drafting objective memoranda and persuasive briefs, interviewing and counseling clients, and oral advocacy.

Ashley's performance as a student in my class was exemplary. Ashley is a highly perceptive, inquisitive, and self-motivated learner who possesses excellent critical thinking and legal reasoning skills.

Ashley's written work is particularly remarkable. Both her predictive memos and her persuasive briefs reflect comprehensive research and an unusual ability to navigate subtle legal distinctions and nuanced details. She is also adept at telling persuasive legal and factual narratives. Ashley entered law school as a top-notch writer, and quickly took to the specifics of legal analysis and writing, incorporating strong reasoning by analogy, using declarative language, and grounding her argumentation in case law. And unlike many law students, Ashley has retained beauty and fluidity in her writing, leading to arguments that are both compelling and enjoyable to read.

Ashley also contributed significantly to classroom discussions and simulations. Ashley regularly surfaced important issues related to power and the law, and helped to create a welcoming environment in which other students felt comfortable sharing their own perspectives. In our client-based simulations, Ashley demonstrated an outstanding ability to build rapport, empower her clients, and provide candid legal advice. For example, in a simulated interview with a client who faced workplace discrimination due to her status as a mother, Ashley was able to learn far more information than other students because of the bond that she formed with the

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client and her intuitive ability to make people feel comfortable sharing challenging information. For our capstone project, Ashley thrived in the oral argument context, providing deft answers to questions and making her client's case in a respectful and effective manner.

Finally, Ashley approached the learning process with a level of maturity and humility rare in first year students. A key element of my course involves self-reflection and consideration of supervisor feedback to encourage students both to feel more confident in the work product they submit it, and to understand how to improve it after. Over the course of the year, Ashley became increasingly confident in her work product, and took the time to incorporate feedback and critique to continually improve her work.

On a more personal note, Ashley is a joy to work with and will make an excellent colleague. Ashley has always taken advantage of opportunities to meet with me one-on-one for mentorship and career advice even as I transitioned from NYU to Brooklyn Law, and I have delighted in watching her crystalize her plans to use her law degree to advance American Indian rights. I encouraged her to apply to NYU's Clerkship Diversity program and was thrilled to hear that not only had she been accepted into the program, but also that she had secured an internship in the Eastern District of New York after her first year of law school. Her commitment to becoming the strongest possible advocate and willingness to place herself in new and unfamiliar environments to pursuit of those goals is a delight to see. Ashley is thoughtful, mature, and generous of spirit, and I am confident that she will thrive in the intimate setting of a judge's chambers.

If selected for a judicial clerkship, I know that Ashley will provide excellent service to the Court, take full advantage of the learning opportunities afforded to clerks, and use her position to help elevate others whose backgrounds are, like hers, less commonly reflected in the legal profession. I recommend Ashley for a clerkship in the strongest possible terms. If I can be of any further assistance in your deliberations, please do not hesitate to contact me at 914-649-3928 or elizabeth.chen@brooklaw.edu.

Sincerely,

/s/

Elizabeth Chen
Visiting Assistant Professor of Legal Writing
Brooklyn Law School

NYU | LAW

EMMA KAUFMAN
Assistant Professor of Law

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Dear Judge:

I'm writing to recommend my student, Ashley Williams, who has applied for a clerkship in your chambers. Ashley is an extraordinary person and a bright student. I'm delighted to endorse her application.

I'll say more below, but here are some highlights. Ashley grew up in Tulsa, Oklahoma. She is the first person in her family to attend college, and she received a master's degree at UCLA before coming to law school. She is a student leader at NYU: an active member of the Black Law Students Association; leader of the school's Native American Law Student Association; and an engaged participant in the classroom. Ashley is also a determined person, who navigated a brain tumor and provides financial support to her family. And she is an outstanding law student, who just earned an A in my very difficult, upper-level constitutional criminal procedure course.

I first met Ashley when she was a student in my 1L course, Legislation and the Regulatory State (LRS). LRS, which is a required first-year course at NYU, can be challenging for many students. It is a crash course in statutory interpretation, structural constitutional law, and administrative law, full of unsettled doctrine and recent Supreme Court cases. Ashley was not intimidated. She spoke often—not too much, but enough to make my job easier and the students around her feel more comfortable exploring new ideas.

Given her performance in LRS, I was thrilled when Ashley enrolled in my constitutional criminal procedure class this spring. My criminal procedure course is atypical. Rather than focusing on policing or criminal adjudication, it surveys post-conviction constitutional criminal law. The material is daunting, and the class has significant overlap with Federal Courts. (For example, we cover sovereign immunity, qualified immunity, the boundary between habeas and Section 1983, and the standards for modification and termination of consent decrees.) My class is hard enough that only serious students enroll; and it's doctrinal enough to teach me a great deal about students' capacity as lawyers and promise as law clerks.

Ashley rose to the occasion. She was a confident and curious participant in the class, which is saying something given how politically sensitive material about incarceration can be. In a room where students often agreed with each other, Ashley questioned assumptions, including her own. She was thoughtful—never dogmatic and always open to new ideas. Really, a model student.

She also crushed the exam. I grade my students anonymously on a strict curve, reserving As for those who have a complete understanding of the doctrine and excellent writing skills.

Ashley's exam was among the very best. She knew the material cold and earned a top grade in a course filled with motivated, upper-level students.

In short, Ashley is a lightning bolt, who has let neither personal adversity nor challenging doctrine deter her. She has the legal skills to be an excellent law clerk and the sort of personality that will make chambers a happier and smoother place to work. I know Ashley would learn a tremendous amount from working for you, and I hope you'll take a serious look at her application.

Please do not hesitate to reach out if I can offer any additional information.

Sincerely,

Emma Kaufman
Assistant Professor of Law
New York University School of Law

APRIL 2023 WRITING SAMPLE

Ashley N. Williams
anw2059@nyu.edu

The attached document was prepared for the Supreme Court Simulation Seminar where I was instructed to prepare a bench memorandum summarizing the background, key issues, and principal arguments presented by the parties in a case. This writing sample is my independent work after receiving minimal edits.

BENCH MEMORANDUM

To: Dean Troy McKenzie, Professor Jack Millman
From: Ashley Williams
Date: April 5, 2023
Case Name: *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*
No.: 22-227
Cert. To.: U.S. Court of Appeals for the First Circuit

QUESTION PRESENTED: Whether the Bankruptcy Code unequivocally abrogates tribal sovereign immunity.

CITATION TO OPINIONS BELOW: The opinion for the United States Court of Appeals for the First Circuit is reported at 33 F.4th 600. The memorandum of decision and order of the Bankruptcy Court is reported at 622 B.R. 491.

I. RELEVANT STATUTORY PROVISIONS

At issue in this case is Section 106(a) of Title 11 of the U.S. Code, which provides for waivers of sovereign immunity.

> "Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following: Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title." 11 U.S.C. § 106(a).

Further, Section 101(27) defines a governmental unit.

> "The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." 11 USC § 101(27).

II. BACKGROUND AND PROCEDURAL HISTORY

This case arises at the intersection of the Bankruptcy Code and long-recognized tribal sovereign immunity. Section 106(a) lists the sections of the Bankruptcy Code where sovereign

immunity is abrogated. 11 U.S.C. § 106(a). Further, Section 101(27) defines the specific governmental units included in that abrogation. 11 USC § 101(27).

Congress defined a "governmental unit" in the original Bankruptcy Code (at the same time that it first enacted the abrogation provision). Pet'r's Br. at 5 (citing Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §§ 101(21), 106, 92 Stat. 2549, 2552, 2555-2556).

The language of Section 101(27) is critical in this case because this Court's precedent requires that, in order to abrogate tribal sovereign immunity, Congress must express its intent to do so unequivocally. *Okla. Tax Commn. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991). This court has long held that "Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories. *Id.* Because Indian Tribes[1] are "separate sovereigns pre-existing the Constitution," they "have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). Suits against Indian tribes are thus barred by sovereign immunity absent a **clear waiver** by the tribe or congressional abrogation." *Okla. Tax Commn.,* 498 U.S. 505 at 509 (internal citations omitted) (emphasis added).

A. Parties to the Proceeding

The parties to this case are Petitioners Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al. (hereinafter "the Band") and Respondent Brian W. Coughlin (hereinafter "Mr. Coughlin"). The Band is a federally recognized tribe that "wholly owns L.D.F. Business Development Corporation; L.D.F. Business Development Corporation wholly owns L.D.F.

[1] I will use the terms "Indian" and "Indian tribe" herein to match the language of the law, but I recognize that the terms "Indigenous" or "Native American" are considered more appropriate terms in other contexts.

Holdings, LLC; and L.D.F. Holdings, LLC wholly owns Niiwin, LLC, d/b/a Lendgreen." Pet'r's Br. iii.

The Band's subsidiary, Lendgreen, provides short-term financing to consumers. *Id.* at 6. It is one of many businesses operated by the Band to "generate revenue essential to funding tribal services and programs." *Id.* at 6.

B. Procedural History

On December 4, 2019, Brian Coughlin filed a Chapter 13 petition and listed among his debts $1,600 owed to Lendgreen. *In re Coughlin*, 622 B.R. 491, 492 (Bankr. D. Mass. 2020). Mr. Coughlin claimed that after filing his petition, he provided written notice to the Band, who allegedly "continued to send him emails and to make telephone calls to him seeking payment of a so-called payday loan they made to him prepetition." *Id.* Mr. Coughlin also claimed that he was "so emotionally upset by the continued collection activities that he suffered depression, anxiety, and suicidal ideation, resulting in catastrophic damages." *Id.* at 492–93. Mr. Coughlin filed a motion to recover for alleged violations of the automatic stay provision of 11 U.S.C. § 362. *Id.* at 492.

The Band "hotly disputed" that it was in violation of the stay. *Id.* Further, the Band filed a motion to dismiss, arguing that the court lacks "subject matter jurisdiction in this dispute because, as a sovereign nation, they are immune from suit" in that court." *Id.* at 493. Bankruptcy Court Judge Frank J. Bailey granted the Band's motion to dismiss.

On direct appeal from that decision, the United States Court of Appeals for the First Circuit reversed. *In re Coughlin*, 33 F.4th 600, 604 (1st Cir. 2022). The three-judge panel included Chief Judge Barron, Circuit Judge Lynch, and District Judge Burroughs. *See Id.*

III. OPINION BELOW

Writing for the two-judge majority, Judge Lynch acknowledges the existing circuit split on the question of whether the Bankruptcy Code abrogates tribal sovereign immunity. The Sixth Circuit held in *In re Greektown Holdings* that Congress *did not* unequivocally abrogate tribal sovereign immunity in the Bankruptcy Code. *In re Greektown Holdings, LLC*, 917 F.3d 451, 460 (6th Cir. 2019). In contrast, the Ninth Circuit held in *Krystal Energy* that Congress spoke unequivocally and did abrogate tribal sovereign immunity with respect to the Bankruptcy Code. *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1061 (9th Cir. 2004). The First Circuit, consistent with the Ninth Circuit, held below that the Bankruptcy Code unequivocally strips tribes of their immunity. *In re Coughlin*, 33 F.4th 600, 603 (1st Cir. 2022).

The First Circuit acknowledges the "enduring principle of Indian law: Although Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government." *Id. at 605*. It turns first to a textual analysis of Section 106(a) and focuses on "whether Congress intended to abrogate tribal sovereign immunity when it used the phrase 'governmental unit.'" *Id.* A "governmental unit" is further defined in Section 101(27) of the Code, and the court focuses on the "or other foreign or domestic government" language therein. *Id.*

The panel majority states that there is no real disagreement that a tribe is a government and supports this assertion with dictionary definitions. *Id.* The majority states that "it is also clear that tribes are domestic, rather than foreign because they 'belong[] or occur[] within the sphere of authority or control or the . . . boundaries of' the United States." *Id.* at 606 (citing the Webster's dictionary) (alterations in original). The court further provides historical support for that

conclusion when it references "one published bankruptcy opinion show[ing] an understanding even before 1978 that tribes could function as and claim the benefits of government." *Id.*

Specifically, the panel majority relies on *In re Bohm's, Inc.*, a 1979 case which states that an "Indian tribe ought to be considered an instrumentality of the Federal Government for the purpose of determining priorities under the [pre-1978] Bankruptcy Act, and a conduit for government funds and resources." *In re Bohm's, Inc.*, No. B-77-1142 PHX VM, 1979 Bankr. LEXIS 895, at *12-13 (Bankr. D. Ariz. Mar. 26, 1979). The panel majority relies on this Arizona Bankruptcy Court case to assert that "Congress was aware of the existing definition of 'governmental unit' when it incorporated it into § 106." 33 F.4th at 606. Further, the panel majority states that Congress was "well aware when it enacted § 101(27) in 1978 and § 106 in 1994 that Indian tribes were legally "domestic dependent nations," a term coined in 1831, and that domestic dependent nations are necessarily a form of domestic government. *Id.* (citing *Cherokee Nation v. State of Ga.*, 30 U.S. 1, 2 (1831)).

Lastly, the panel majority draws support for its conclusion from the Bankruptcy Code's structure, drawing support from the fact that the code goes beyond merely stripping immunity to providing benefits, and "in practice, tribes benefit from their status as governmental units," especially in the collection of taxes. *Id.* at 608.

In his dissent, Chief Judge Barron writes that Congress did not mention tribes whatsoever in Section 101(27). *Id.* at 613. He notes that "Congress did not do so even though it did name many governmental types, including some that, like Indian tribes, enjoy an immunity from suit that Congress may abrogate only clearly and unequivocally." *Id.* Chief Judge Barron offers the simple conclusion that "Congress did not mention Indian tribes in Section 101(27) because Congress did not intend to include them as "governmental unit[s]." *Id.* at 614 (citing *In re*

Greektown Holdings, LLC, 917 F.3d 451, 462 (6th Cir. 2019)) ("Congress's failure to [explicitly mention Indian tribes], after arguably mentioning every other sovereign by its specific name, likely constitutes '[a] circumstance supporting [the] sensible inference' that Congress meant to exclude them, pursuant to the familiar *expressio unius* canon").

The Chief Judge addresses and refutes the textual arguments put forth by the majority, stating that "because we are trying to determine whether Congress–through that phrase–abrogated tribal sovereign immunity," the court "must be convinced that there is no plausible way of reading those words to exclude Indian tribes." *Id.* at 617. Chief Judge Barron also finds the legislative purpose argument not as clearly and unequivocally on the side of reading Section 101(27) to include Indian tribes, as the majority suggests. However, he admits some limitations of this argument. *Id.* at 623. Further, on the legislative history, he notes that the "legislative history makes no relevant mention of Indian tribes at all." *Id.* at 624.

IV. PETITIONER'S CONTENTIONS

At the center of Petitioner's argument is that "to abrogate tribal immunity, Congress must 'unequivocally' express that purpose." Pet'r's Br. 6 (citing *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001)). Per Petitioners, "common-law immunity from suit traditionally enjoyed by sovereign powers" is at the core of tribal sovereign immunity and must therefore be closely observed. *Id.* at 17. Because the bankruptcy code lacks any reference to Indian tribes, it does not provide the "perfect confidence" necessary to infer that Congress intended to abrogate tribal sovereign immunity. *Id.* at 13. The clear-statement rule requires that where there are other probable readings of Congress's statement, a "court may not imply an abrogation of immunity." *Id.* Petitioner contends that neither the text nor historical and policy considerations support an abrogation of tribal sovereign immunity here. *Id.*

A. Text

Petitioners contend that Congress easily could have, but did not, refer to Indian Tribes in the bankruptcy code and further that the most "straightforward" method Congress could have employed to abrogate tribal sovereign immunity would have been an explicit reference to tribes. *Id.* at 23. Per Petitioner, "numerous examples" exist in other statutes where tribes are mentioned separately alongside entities mentioned in Section 101(27). *Id.* Petitioner provides specific examples on this point, such as the Resource Conservation and Recovery Act" which "permits suits against a 'person,' which includes a 'municipality' that is then defined to include 'an Indian tribe or authorized tribal organization or Alaska Native village or organization.'" *Id.* at 25. Petitioner further references similar examples in the Safe Drinking Water Act, the Clean Water Act, and the Federal Debt Collection Procedures Act.

In response to the panel majority's contention that Congress need not use "magic words," Petitioner distinguishes requiring magic words and looking to Congress's practice in other contexts. *Id.* at 27. Therefore, it is "exceedingly odd," Petitioners contend, to assume Congress chose a "different and more convoluted method of achieving the same result in the Bankruptcy Code." *Id.* at 28.

Further, Petitioners contend that Reference to "other domestic government" fails to satisfy the clear statement rule. *Id.* at 30. The panel majority relies on dictionary definitions of "domestic" and "government" to infer abrogation. *Id.* Petitioners contend that dictionary definitions alone do not determine whether a statutory term is unambiguous, as separate dictionary definitions may not produce the same meaning as phrases when the words are joined together. *Id.* at 31. Petitioner further draws contrasts between the terms "domestic government" and "domestic dependent

nation," arguing that it is at least questionable "if not entirely inaccurate" to hold those terms as equivalent. *Id.* at 33.

Petitioners also look to other textual and structural features of Section 101(27) to "undermine the conclusion that other domestic government encompasses Indian tribes." *Id.* at 34. Petitioners argue the surplusage cannon has no role here because "there are more reasonable interpretations of 'other domestic government.'" *Id.* at 40. Petitioners offer the Washington Metropolitan Area Transit Authority (WMATA) in answer to the contention that no other entity could be captured by the term 'other domestic government.'" *Id.*

B. History

Petitioners argue that the unequivocal intention to abrogate tribal sovereign immunity must be found in the statutory text itself and may not be implied. *Id.* at 45. However, if considered, neither historical context nor policy supports abrogating tribal sovereign immunity. *Id.* at 45. Petitioners argue that "the panel majority's sole authority for that supposed backdrop, however, is a single 1979 bankruptcy court decision 'published' in a reporter called Bankruptcy Court Decisions. *Id.* at 43. Petitioners also counter that reliance on floor statements is appropriate in this context. *Id.*

V. RESPONDENT'S CONTENTIONS

Respondent and Petitioners agree that the Band, as a federally recognized tribe, is "generally immune from suit." Resp't's Br. 4 (citing *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788-89 (2014)). However, Respondent notes that tribal sovereignty is "in Congress's hands" and Congress can "abrogate tribal immunity" by "unequivocally expressing that purpose." *Id.* (citing *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411,

418 (2001)). Therefore, the Respondent's argument turns on the contention that Congress **clearly** abrogated tribal sovereign immunity in the Bankruptcy Code.

A. Text

Per Respondent, Congress used undisputedly clear language in 11 U.S.C. § 106(a) to abrogate the immunity of a 'governmental unit.'" *Id.* at 9. Further, whether Congress has authorized suit against an otherwise immune defendant is a matter for the "traditional tools of statutory construction." *Id.* at 14 (citing *Michigan v. Bay Mills Indian Cmty*., 572 U.S. 782, 788 (2014)). Respondent argues that the clear statement rule is one tool of many for interpreting whether Congress abrogated tribal sovereign immunity, requiring that "the intent to authorize suit must 'be clearly discernable from the statutory text.'" *Id.* Section 101(27) defines a governmental unit for the purposes of sovereign immunity abrogation as including "other foreign or domestic government." *Id.* at 16.

Turning to the dictionary definition, Respondent argues that a tribe is a domestic government. *Id.* Per Respondent, the relevant ordinary meaning of 'government' was then, as it is now, 'the organization, machinery, or agency through which a political unit exercises authority and performs functions.'" *Id.* (citing Webster's Third New International Dictionary 982 (1976)). Tribes perform those functions, so they are governments, per Respondent's argument. *Id.* Tribes are also "domestic" under the dictionary definition. *Id.* at 20. Further, the Court has "many times used the word 'domestic' specifically to describe tribes. *Id.* Per Respondent, the Court has most often used the phrase "domestic dependent nations," supporting the idea that the ordinary meaning of domestic includes tribes. *Id.*

Further, Respondent argues that reading the code as a whole confirms that the tribe is a "governmental unit." *Id.* at 24 (citing *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991))

("[T]he cardinal rule that a statute is to be read as a whole"). Respondents argue that because the filing of a bankruptcy petition operates "as a stay, applicable to all entities," 11 U.S.C. § 362(a), the stay, injunction, and confirmation provisions apply to the tribe. Resp't's Br. 24. Therefore, a reading of tribal sovereign immunity from suit would "single out tribal governments (and tribally backed Internet payday lenders) for immunity from suits that the Code authorizes against the United States, the several States, and equally sovereign governments around the world." *Id.* at 26. Respondent's point on this issue is an intentionalist one that argues it is implausible to believe Congress intended the outcome the text would require if read facially.

Additionally, Respondent points to other elements of the Bankruptcy Code that use "governmental unit" to refer to entities that carry out governmental functions such as the power to tax, police, and regulate the family, all functions tribes have and use. *Id.* at 27. Notably, the sections referenced in this argument do not include Section 101(27), the specific section dedicated to defining the bounds of sovereign immunity in the Code.

B. History

While Respondent argues that the case could be decided on the text alone, the Respondent also argues that the scope and history of the Bankruptcy Power show that the Code abrogates tribal sovereign immunity. *Id.* at 30. Respondent primarily relies on *Katz*, the "leading case on the relationship of the Bankruptcy Clause to sovereignty. *Id.* (citing *Central Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 362-63 (2006)). "*Katz* grounded its holding in "[t]he history of the Bankruptcy Clause, the reasons it was inserted in the Constitution, and the legislation both proposed and enacted under its auspices immediately following ratification." *Id.* Respondent argues that since *Katz*, this Court has held that sovereign immunity has no place in bankruptcy, citing *Allen v. Cooper*, 140 S. Ct. 994, 1002-03 (2020), and further that Congress's bankruptcy powers are in a

small category, along with eminent domain and war powers, in a small category of authorities that "give rise to structural inferences." *Id.* (citing *Torres v. Texas Dep't of Pub. Safety*, 142 S. Ct. 2455, 2467 (2022).

VI. DISCUSSION

Indian tribes have "long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (citing *Turner v. U.S.*, 248 U.S. 354, 356 (1919). It has also long been settled law that abrogation of sovereign immunity cannot be implied, but must be unequivocally expressed. *U.S. v. King*, 395 U.S. 1, 4 (1969). Therefore, without unequivocal congressional abrogation, tribes "are exempt from suit." 436 U.S. 49 at 58.

The central question here is whether this Court should read as unequivocal a waiver of tribal sovereign immunity by Congress in the Bankruptcy Code, though one is not explicitly written. When interpreting the same language, courts below, in this case and in others, have come to opposing conclusions.

Petitioners have the better argument here, so the Court should hold that tribal immunity has not been abrogated. As Petitioners assert, Congress has, on many occasions, such as the Resource Conservation and Recovery Act, Safe Drinking Water Act, Clean Water Act, and the Federal Debt Collection Procedures Act, specifically referenced tribes when abrogating tribal sovereign immunity. Pet'r's Br. 5. For example, the Resource Conservation and Recovery Act permits suits against a "person" which includes a municipality defined as:

> "The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, **or an Indian tribe or authorized tribal organization or Alaska Native village or organization**, and (B) includes any rural community or unincorporated town or village or any other

> public entity for which an application for assistance is made by a State or political subdivision thereof." 42 U.S. Code §§ 6903, 6972 (emphasis added).

As outlined in Petitioner's brief, the Clean Water Act's citizen-suit provision follows the same structure. *See* 33 U.S.C. §§ 1362(4)-(5), 1365(a)(1) (referring to "person," which includes a "municipality" defined as an "**Indian tribe or an authorized Indian tribal organization**") (emphasis added). Additionally, the Federal Debt Collection Procedures Act defines a "[g]arnishee"—a non-debtor "person" who may be the subject of a court-issued writ of garnishment, 28 U.S.C. § 3002(7)—and specifies that "person" includes "a State or local government **or an Indian tribe**," *id*. § 3002(10) (emphasis added). These statutory provisions provide prime examples of what it means for Congress to abrogate tribal sovereign immunity unequivocally.

No such comparable language can be found in the Bankruptcy Code. Clearly, Congress can and does make its intent to abrogate tribal sovereign immunity clear and does so by writing it plainly. While magic words cannot and should not be required, the standard remains unequivocal expression. *Okla. Tax Commn. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991). Webster's Dictionary should not be required to determine whether the statute includes tribes. Respondents offer no rationale for why Congress would have been so indirect in the Bankruptcy Code while it has been so plain in other places.

At the core of his argument, the Respondent asks the Court to infer an abrogation of tribal sovereign immunity where Congress does not clearly express its intent to do so. The Respondent advocates an unprecedented decision by this Court. Deciding for the Respondents could not only flood Bankruptcy Courts across the Country with tribal matters not previously faced, but it could also open the door to a deluge of challenges to tribal sovereign immunity in any and all statutes.

Finding for the Respondents would effectively shift the abrogation of tribal sovereign immunity from the exclusive purview of Congress to the whim of courts across the country. The sprawling 574 federally recognized tribes would face a hodgepodge of sovereign immunity, which would require significant time and money to resolve through courts. The disparity in resources amongst tribes, and in comparison to non-tribal entities, strongly counsels against moving toward that outcome. Tribes should not face drastically different limits to their sovereignty based on the whim of Webster and Oxford. The abrogation of tribal sovereign immunity ought to remain with Congress. The unique conditions tribal nations face, given the history of this country, counsel incredible care in this matter.

If Congress did intend to abrogate tribal sovereign immunity in the Bankruptcy code, it could adjust it toward its other clearer abrogation in other statutes, as it made similar adjustments in 1978 and 1994. Leaving this matter in the hands of Congress would avoid watering down the "unequivocal" standard moving forward. And not watering down this standard increases judicial efficiency and is observant of the separation of powers.

VII. RECOMMENDATION

I recommend the Court reverse the judgment of the Court of Appeals for the First Circuit.

Applicant Details

First Name	**Tyler**
Last Name	**Wilson-Menting**
Citizenship Status	**U. S. Citizen**
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Address	**Address** Street **19 Lawes Lane** City **Garrison** State/Territory **New York** Zip **10524** Country **United States**
Contact Phone Number	**9176054909**

Applicant Education

BA/BS From	**Hobart and William Smith Colleges**
Date of BA/BS	**May 2015**
JD/LLB From	**Quinnipiac University School of Law** **http://law.quinnipiac.edu/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**Not yet ranked**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

SENT VIA EMAIL

Tyler Wilson-Menting
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Dear Judge,

I write to express my keen interest and to submit my application for a clerkship in your chambers. I feel drawn to clerk because of the opportunity to further hone my research and writing skills as well as gain practical experience with a wide variety of legal topics and litigation. The knowledge I will be able to gain from a clerkship with be invaluable to me in my career and I feel based on my academic success, writing skills, and professional experience I can provide tremendous value and assistance.

I graduated from Hobart College in 2015 with Honors, completing a capstone thesis looking at the "Rhetoric of American Exceptionalism During Wartime" that later was published. My time on Capitol Hill both as an intern and later a staffer was formative in my career allowing me to see our laws at their genesis and gain valuable research and writing experience.

During my time at Promontory Financial Group, I was the primary author of memorandum and reports on a wide variety of financial services topics, frequently being submitted to regulators around the world focusing on regulatory and administrative law. Working on three different continents for extended periods of time has given me much insight into the many and varying legal systems around the world.

In 2022 I was selected for a semester long study abroad program Trinity College Dublin, School of Law where I achieved the highest grade in the class in Comparative National Security Law and the Irish Legal System. I recently began an internship this summer for the Connecticut Attorney General, Finance and Revenue Section, and in the fall, I will be interning for United States Magistrate Judge Vatti in Bridgeport.

Working for The United States District Court would be a privilege and I believe I can add value with my diverse professional and personal experiences. I look forward to hearing from you and appreciate your consideration. Thank you.

Respectfully,

Tyler Wilson-Menting

Tyler Wilson-Menting
917-605-4909 | tylerjwm@gmail.com

Education

Quinnipiac University School of Law, Connecticut **J.D. expected 2024**
Distinguished Academic Achievement Award (highest grade in class) in: Comparative National Security Law and The Irish Legal System
Expected Concentrations with Honors In: International Law and Policy, and Civil Advocacy and Dispute Resolution

Trinity College Dublin School of Law, Ireland **Semester abroad 2022**
International Law Program

Hobart College, New York **B.A. with Honors 2015**
Major: Honors in American Studies. *Minors:* Political Science and Religious Studies
Honors Thesis: "Three Modern Presidents and Their Use of the Rhetoric of American Exceptionalism during War Time"
Major Thesis: "President Obama's Rhetoric in State of the Union Speeches about Poverty and Social Class in Modern Day America"
Honors and Awards: Dean's List, ECAC All-Academic Team, Liberty League All-Academic Team, Statesmen Scholar, Honors Program
Activities: Four years on varsity rowing team

Experience

Connecticut Attorney General, Finance and Revenue, *Legal Intern*, Connecticut **Summer 2023**
- Assist in legal support to State agencies including banking, insurance, revenue, economic development and risk management board.
- Draft memoranda and worked on civil actions, investigations and cases on topics including consumer protection, cryptocurrency, freedom of information act, unfair/deceptive/abusive acts and practices, tobacco settlements and loan servicing.

United States Attorney's Office, District of Connecticut, *Legal Intern,* Connecticut **Spring 2023**
- Drafted pleas, indictments, pre-trial and post-trial motions, sentencing memoranda, briefs and research memoranda. Worked on criminal cases and appeals involving conspiracy, trafficking, money laundering, financial crimes, firearms, drugs, wire/mail fraud, national security/terrorism (unclassified), extradition, and organized crime.
- Assisted with proceedings including arraignments, bond hearings, pleas, conferences, pretrial hearings, discovery, sentencing, supervised release and appeals.

Federal Maritime Commission, Office of The Commissioner, *Legal Intern,* Washington D.C. **Summer 2022**
- Assisted with implementation of Ocean Shipping Reform Act of 2022, including researching and drafting regulations that streamlined the commission's enforcement process. Worked with commission counsel in advising commissioners on investigations, enforcement, antitrust issues and policy.

Tyler Wilson-Menting
917-605-4909 | tylerjwm@gmail.com

- Wrote briefing materials for Commissioners, researched and prepared memoranda on Commission initiatives and priorities. Interfaced with federal transportation agencies and industry stakeholders.

Promontory Financial Group, an IBM Company, New York **2017-2021**
Analyst from **2017- 2019**; promoted early to *Associate* in **2019 - 2021**
Project locations: New York, New York; Washington, D.C.; Denver, Colorado; Phoenix, Arizona; Dubai and Abu Dhabi, UAE; Muscat, Oman; Copenhagen, Denmark.

- Subject matter expertise in risk management, risk assessments, investigations, forensic lookbacks, anti-money laundering, sanctions, know your customer rules, governance, securities regulation, consumer protection, regulatory and management reporting, Islamic banking, private banking and cybersecurity.
- Projects included regulatory mandated investigations/lookbacks, implementing governance structures, target operating models, process mapping, reviewing and recommending changes to existing compliance programs, establishing new compliance programs and preparing/advising for sales/mergers.
- Spent five months assigned to the Dubai office, working across the region. Spent six months in Copenhagen working on multiple workstreams of an engagement, overseeing bank staff and other consultants. Spent six months in Phoenix and was often the only employee onsite overseeing a team of 40+ contractors.

Fraioli and Associates, *Finance Associate*, Washington D.C. **2016-2017**

- Advised Members of Congress, their campaigns and PACs, on campaign strategy, fundraising and policy. Wrote briefing memoranda, managed solicitations, events, and compliance with election laws.

U.S. House of Representatives, *Legislative Staff Fellow*, Washington D.C. **2016**

- Part of member's legislative team, wrote memoranda and briefed Member, managed interns, staffed member, wrote constituent correspondence, advised on legislation and committee work.

U.S. House of Representatives, *Legislative and District Intern*, Washington D.C. and New York **2014**

- Drafted memoranda, attended hearings and briefings, summarized district surveys, gave capitol tours and drafted correspondence. Organized community and business outreach and assisted with case work.

Certifications

Promontory Financial Group/IBM Certified Project Manager **2020**
Certified Anti-Money Laundering Specialist (CAMS) **2018**

Interests

Playing trumpet and piano, traveling internationally and domestically (38 countries and 41 states), single sculling, running, reading American history, visiting national parks and state capitals, politics, hiking, gardening, coin collecting

Joshua D. Berry
University Registrar

Quinnipiac
UNIVERSITY

OFFICE OF THE REGISTRAR
HAMDEN, CT 06518-1908

June 13 2023 Law

Mr. Tyler J. Wilson-Menting
19 Lawes Lane
PO Box 243
Garrison NY 10524

ID Number: XXXX737
Major: Juris Doctor

Course		Title	Grd	R	Hrs Att	Hrs Cmpt	Hrs Calc	Grade Points		
		Law Fall 2021								
LAWS	101	Civil Procedure I	C+		3.0	3.0	3.0	7.0		
LAWS	103	Contracts I	C		3.0	3.0	3.0	6.0		
LAWS	107	Torts	B		4.0	4.0	4.0	12.0		
LAWS	113	Criminal Law	B+		3.0	3.0	3.0	10.0		
LAWS	111	Legal Skills I	B-		2.0	2.0	2.0	5.3		
		21/LF Totals:			15.0	15.0	15.0	40.3	GPA=	2.69
		Cumulative Totals:			15.0	15.0	15.0	40.3	GPA=	2.69
		Law Spring 2022								
LAWS	102	Civil Procedure II	C+		2.0	2.0	2.0	4.7		
LAWS	104	Contracts II	C		3.0	3.0	3.0	6.0		
LAWS	105	Property	C		4.0	4.0	4.0	8.0		
LAWS	110	Constitutional Law	B+		4.0	4.0	4.0	13.3		
LAWS	112	Legal Skills II	B		2.0	2.0	2.0	6.0		
		22/LS Totals:			15.0	15.0	15.0	38.0	GPA=	2.53
		Cumulative Totals:			30.0	30.0	30.0	78.3	GPA=	2.61
		Law Summer 2022								
LAWS	365	Comp. National Security Law	A		2.0	2.0	2.0	8.0		
LAWS	429	International Human Rights	B-		2.0	2.0	2.0	5.3		
LAWS	584	Irish Legal System	A		2.0	2.0	2.0	8.0		
LAWS	609	Externship Seminar	A		1.0	1.0	1.0	4.0		
LAWS	520	Public Interest Externship	P		5.0	5.0	0.0	0.0		
		22/LU Totals:			12.0	12.0	7.0	25.3	GPA=	3.62
		Cumulative Totals:			42.0	42.0	37.0	103.6	GPA=	2.80
		Law Fall 2022								
LAWS	305	Federal Income Tax	B-		4.0	4.0	4.0	10.7		
LAWS	307	Trusts & Estates	B-		3.0	3.0	3.0	8.0		
LAWS	369	Real Estate Transactions	B		3.0	3.0	3.0	9.0		
LAWS	599	Intro to Represent Clients Ex	B+		2.0	2.0	2.0	6.7		
LAWS	344	Law, Science & Technology	A-		3.0	3.0	3.0	11.0		
LAWS	361	International Law	A		2.0	2.0	2.0	8.0		
		22/LF Totals:			17.0	17.0	17.0	53.4	GPA=	3.14
		Cumulative Totals:			59.0	59.0	54.0	157.0	GPA=	2.91
		Law Spring 2023								
LAWS	200	Field Placement II	P		3.0	3.0	0.0	0.0		
LAWS	321	Lawyers' Prof. Responsibility	A-		2.0	2.0	2.0	7.3		
LAWS	374	Introduction to Mediation Exp	A-		2.0	2.0	2.0	7.3		
LAWS	428	Negotiation Exp	A		2.0	2.0	2.0	8.0		
LAWS	515	Alt Dispute Resolution	A-		2.0	2.0	2.0	7.3		
LAWS	646	Children/ Social Science	A		3.0	3.0	3.0	12.0		
LAWS	516	International Business Trans.	A-		2.0	2.0	2.0	7.3		
LAWS	579	Adv. Ext. Seminar	A		1.0	1.0	1.0	4.0		
		23/LS Totals:			17.0	17.0	14.0	53.4	GPA=	3.81
		Cumulative Totals:			76.0	76.0	68.0	210.4	GPA=	3.09
					End of Transcript.					

06/13/23 18:58

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Quinnipiac
School of Law

April 26, 2023

Re: Tyler Wilson-Menting

To Whom it May Concern:

I write in support of Tyler Wilson-Menting for a position as a law clerk. He has been my student for two semesters, and we are headed into two more! I am a faculty member and the Associate Dean of Experiential Education at Quinnipiac Law. Mr. Wilson-Menting has been an eager participant in our experiential courses, which I teach and oversee. He is dedicated to packing in every possible opportunity for growth and learning while in law school. I admire both his dedication to learning his craft and his performance in the work.

Mr. Wilson-Menting is meticulous in his planning and is able to accomplish so much due to the careful attention to detail and his unwavering follow-through. His performance at his placements is excellent—from my own observation and the reports from his supervisors in his field placements. They rave about his work, work ethic and his insight. They all report that they can absolutely count on him, with whatever they need him to do. He is also a consistent and engaged participant in the classroom portion of our experiential classes, both orally and in his written reflections. I appreciate how he pushes his classmates to engage as well.

Mr. Wilson-Menting is most interested in government service work so far, and is gathering his experiences both in the regulatory and litigation domains, civil and criminal, and at the federal and state levels. For the fall of 2023, he is already accepted by a federal judge for a judicial externship. His hunger for these experiences, and his commitment to exploring the full range of lawyering opportunities, demonstrates an appreciation of excellence and thoroughness. His own development is a perfect analogy for how he engages in the assignments as well. He is well-traveled internationally as well, with a fascinating background before law school that accounts for much of his maturity, and good judgment, and interpersonal skills with a variety of people. He is both humble and confident—a rare and effective combination.

I have enjoyed working with Tyler Wilson-Menting so far and know that the next two semesters will be as delightful and intriguing as well. It has been quite a journey he is on, and I am privileged to be his guide along the way, for whatever support he needs. He will undoubtedly continue to commit himself to the endeavor and extract every drop of learning that he can. I have no doubt that he would bring this same passion to his future life as a lawyer, never

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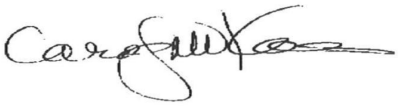
stopping learning and growing in expertise and skill. In the meantime, I am confident that a position as a law clerk after graduation will serve him well, while he provides impeccable service to the judge in the process.

I am happy to provide further detail and information as needed.

Very truly yours,



Carolyn Wilkes Kaas
Carolyn.kaas@quinnipiac.edu
203.582.3234.

United States Department of Justice

United States Attorney
District of Connecticut

Connecticut Financial Center
157 Church Street, 25th Floor
New Haven, Connecticut 06510

(203) 821-3700
Fax (203) 773-5376
www.justice.gov/usao-ct

May 15, 2023

Dear Judge,

I am writing to recommend Tyler Wilson-Menting for a position within your chambers. Tyler was an extern with the United States Attorney's Office for the District of Connecticut during the Spring of 2023 while a student at Quinnipiac University School of Law.

During his time at the Office, Tyler was a consummate professional who regularly earned the gratitude of the AUSAs with whom he worked. Based on my own direct observations of his work ethic and demeanor, I feel confident in stating that he would be a dedicated and valuable member of your team. Throughout the semester, his ability to take the initiative—as well as his commitment to the larger mission of the Department of Justice—was regularly on display.

Tyler eagerly sought out a broad range of legal experiences during his time here. He volunteered for projects across several different units within our Office, including those involving national security, financial fraud, and violent crimes and narcotics. Based on his work product for one of my own cases, I know that Tyler is a thorough legal researcher, able to find obscure cases and mine the docket for critical information to assist in briefs and memos. Tyler has a natural curiosity and enjoys learning new things which will serve him well in his career.

His ability to address complex legal questions in a distilled and straightforward manner is a skill that often takes years to develop; in this sense, he is well ahead of his law school peers. Moreover, he demonstrated an impressive level of maturity by regularly checking in with his supervising attorneys to ensure his research and written products confirmed with the attorneys' intent. This made him both efficient and reliable and was greatly appreciated by the attorneys.

Outside of just his legal skills, he has a calm and steady demeanor that engendered trust amongst my colleagues that he could be relied on for tough and time-sensitive assignments. His work ethic is among the most impressive I have seen from the many Quinnipiac students who have participated in our extern program over the years. Additionally, his naturally optimistic and

friendly disposition allowed him to easily connect with attorneys, staff, and his own peers within the Office.

Tyler was a valued member of this Office while he was an extern and I would welcome the opportunity to discuss his qualifications in further detail. Please do not hesitate to contact me through any of the means of communication indicated in my signature block.

Sincerely,

MARGARET M. DONOVAN
ASSISTANT UNITED STATES ATTORNEY
United States Attorney's Office
District of Connecticut
157 Church Street, 25th Floor
New Haven, CT 06510
Office: (203) 821-3819
Cell: (203) 901-9660
margaret.donovan@usdoj.gov

Federal Maritime Commission
Washington, D.C. 20573

Office of the Commissioner

May 5, 2023

To Whom it May Concern,

I am delighted to recommend Tyler Wilson-Menting for legal employment.

I have worked at the Federal Maritime Commission for over 20 years serving as counsel to a former Chairman, two Commissioners, the Office of the General Counsel and as a trial attorney in the Bureau of Enforcement. I currently serve as Counsel to Commissioner Max Vekich. in which I advise the Commissioner on a wide variety of issues affecting American and global commerce including regulatory enforcement, investigations, anti-trust and policy making and implementation.

Tyler interned for the Office of Commissioner Vekich in Summer 2022 and made a positive and lasting impact. Shortly before Tyler joined our office, The Ocean Shipping Reform Act of 2022 was passed, which provided the Commission with significant additional authorities to address the supply line crises due to COVID. Tyler was instrumental in helping begin the process of promulgating new regulations, updating old ones, and drafting memos and text of proposed rulemakings. He worked closely with our General Counsel on special projects related to the new legislation.

Tyler is an excellent writer and is able to present information in a clear and concise manner to varying audiences. His ability to work with various stakeholders to deliver a polished product is a skill that will serve him well as he progresses in his legal career. Tyler also can drive projects to completion which was very helpful to our busy office and agency.

Tyler brings a mature, global perspective and has a wealth of private sector and government experience for someone of a young age. He asks great questions and is always trying to understand the issue at hand from as many perspectives as possible. Throughout his internship, Tyler interfaced with Senate confirmed Presidential appointees and senior staff with ease and proved to be very comfortable in sensitive situations with political ramifications. I look forward to seeing where he is ten years.

I highly recommend Tyler highly and without reservation. I hope you will give him careful consideration. Please do not hesitate to reach out if I can provide information or answer any questions at ccinque@fmc.gov or (443)-875-3466.

Best Regards,

Cory R. Cinque
Counsel to Commissioner Vekich
Federal Maritime Commission
800 North Capitol St., N.W.
Washington, DC 20573
(443)-875-3466
ccinque@fmc.gov

PROMONTORY
an IBM Company

October 1, 2021

Dear Sir or Madame,

I am very pleased to write this letter of recommendation regarding Tyler Wilson-Menting. Having worked with and supervised Tyler, I have seen first-hand the energy and intellectual talent that he offers an organization.

I have known Tyler since he joined Promontory Financial Group (now an IBM company) in 2017. I greatly enjoyed my interactions with him, as I found him to be intellectually-engaged, with deep natural curiosity and strong, mature conversational abilities. Tyler comfortably interacts with colleagues and clients in a self-assured manner, and I found his involvement in discussions to be both multidimensional and thoughtful.

Tyler worked tirelessly, and selflessly, during his time with Promontory. He was at the top of his peer group in productive, billable time, which reflected his strong work ethic as well as his willingness to travel well beyond the ordinary demands of the job to meet both client and Firm needs. Tyler was pivotal in leading day-to-day management of a large and technically complex, mission-critical task for a major client, and was recognized for his organizational skills and his flexibility in adapting and responding to shifting client needs. In this role Tyler was responsible for interacting with client executives and law firms, and for reporting to banking regulatory authorities regarding highly sensitive matters. Prior to that assignment, he made important contributions to high profile anti-money laundering and sanctions engagements while seconded to our Dubai office; he also served on a review team involving financial crimes matters for a key client in Copenhagen.

Notwithstanding these demanding client responsibilities, Tyler showed himself to be a strong corporate citizen as he pursued internal certification programs relating to project management as well as our diversity and inclusion initiatives. Further, Tyler sought out opportunities to mentor and peer counsel newly hired staff. Tyler understood the importance of, and took an active interest in, building leadership skills that extended beyond the fundamentals of client service.

I was pleased to oversee and to mentor Tyler during his years at Promontory, and I firmly believe that he will continue to make strong contributions to future employers, particularly with the added benefit of the perspective and qualifications he gains through his legal education. Please do not hesitate to contact me if you have any questions, at tloughlin@promontory.com or +1.202.352.5326.

Sincerely,

Thomas P. Loughlin

Thomas P. Loughlin
Managing Director

Promontory Financial Group, an IBM Company
801 17th Street, NW, Suite 1100, Washington, DC 20006 | Telephone +1 202 869 9500 | www.promontory.com

Quinnipiac
School of Law

May 15, 2023

To Whom It May Concern,

I am pleased to recommend my student Tyler Wilson-Menting for judicial clerkship positions.

I have taught at the Quinnipiac University School of Law (formerly the University of Bridgeport School of Law) since 1983. Before that, I was in private practice in New York, focusing on international commercial arbitration and international banking. I have served as the Associate Dean for Academic Affairs and the Associate Dean for Faculty Research, and now, as the Director of Foreign Programs, I run the law school's study-abroad program in Ireland, at Trinity College Dublin, where I met Tyler.

I am quite familiar with Tyler and his work as he was in my Comparative National Security Law class in the 2022 Ireland summer program and in two other classes, International Law and International Business Transactions. Tyler has been a pleasure to have in class. He participates actively in class at a high level. He is well prepared for class discussion, reflecting a thoughtful and exacting reading and analysis of the assigned materials. His contributions are informed by his extensive international experience in business and government.

In the Comparative National Security Law class, Tyler gave an excellent presentation on money laundering and sanctions in the context of national security law. In 70 minutes, he took us through the legal history of money laundering, the current key U.S. laws and how the private sector deals with them (taking advantage of his international professional experience), case studies of countries and institutions, and the consequences of violations. This demonstrated his ability to present and explain complex legal concepts in a straightforward and accessible way. He received the highest grade on my anonymous final exam and in one of the two other classes in the Ireland program.

In both International Law and International Business Transactions, I have closely observed and mentored Tyler in his writing. His writing is careful and precise, and he chooses his words with care. His editing demonstrates his attention to detail.

Tyler is intelligent, hardworking, articulate, and personable and appears to be a self-starter. By all accounts he is well liked by the faculty and his fellow students and is one of the leading members of his class. I have no doubt that you would be pleased to have him in your chambers and would find him to be a valuable asset. I recommend him highly. I hope you will give him careful consideration.

Please do not hesitate to contact me via email or telephone if I can provide additional information or further assistance.

Sincerely,

William Dunlap

William Dunlap
Professor of Law
william.dunlap@quinnipiac.edu
203-980-5291

Tyler Wilson-Menting

tylerjwm@gmail.com – 917-605-4909

Writing Sample - 2023

As part of my International Law class, in which I received an A, I prepared the below paper. The paper critically examines the role of international law in the U.S. legal system. In *Bond v. United States*, the Supreme Court was asked to decide whether, whenever the United States implements a treaty with the Article II process (in that case the Chemical Weapons Convention (CWC)), Congress possesses the constitutional authority to enact laws to enforce the treaty, even when those laws would otherwise transcend Congress's delegated powers. The court avoided answering that question by interpreting the CWC narrowly so as not to apply to the appellant, leaving many potential questions and implications for the international legal system unanswered. I argue that the *Missouri v. Holland* decision eroded the power of the states by giving the federal government a mechanism to make laws without appropriate constitutional authority and that the Supreme Court should have overruled *Missouri v. Holland* in the *Bond v. U.S.* case.

Tyler Wilson-Menting - International Law - Professor Dunlap

Introduction of the issue and background of the key cases

In *Bond v. U.S.* (2014), the Supreme Court was asked to decide whether, whenever the United States implements a treaty with the Article II process (as was the case with the Chemical Weapons Convention (CWC)), Congress possesses the constitutional authority to enact laws to enforce the treaty, even when those laws would otherwise transcend Congress's delegated powers. *Bond v. U.S.*, 572 U.S. 844, 848 (2014). The Court in the *Bond* case avoided answering that question by interpreting the CWC narrowly so as not to apply to the appellant. However, if the Court had held instead that Congress did intend the CWC to apply to appellant Bond's conduct, the Court would then have had to answer the question about whether or not treaties implemented with the Article II process provide Congress the opportunity to enact laws even if these laws transcend Congress's delegated powers.

Article II of the U.S. Constitution states that the President has the "Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." Article VI declares that, along with the Constitution and federal law, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land," and that these treaties prevail over inconsistent state laws. However, the Constitution fails to specifically define or limit the scope of treaty power in Article II, resulting in rich debate.

The federal government cannot exercise powers reserved to the states under the 10th Amendment of the Constitution. Similarly, the federal government should not be allowed to pass domestic legislation directed by an international treaty under Article II that conflicts with the powers reserved for the states. The Court should have overruled *State of Missouri v. Holland,* 252 U.S. 416, 430–31 (1920) in its decision in *Bond*. The Court in *Holland* ruled that the

federal government can enact treaties even if they infringe on the rights reserved to the states under the Tenth Amendment if they are made "under the authority of the United States" and become "the supreme law of the land." *Missouri v. Holland,* 252 U.S. 416, 430–31 (1920). While national security is important, *Missouri v. Holland* eroded the power of the states by giving the federal government a mechanism to make laws without appropriate constitutional authority. The US Constitution is the supreme law of the land, according to Article VI, the Supremacy Clause of the Constitution, which declares: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." Reaffirming *Missouri v. Holland'*s conception of a robust federal treaty power is problematic because it allows for congressional overreach, under the guise of implementing treaties. *Missouri v. Holland,* 252 U.S. 416, 430–31 (1920). The *Holland* ruling did make the case that international treaties are above state law. Bond held that there is federal supremacy in international treaties. *Bond*, 572 U.S. 844, 848 (2014). The implications of overturning the *Holland* ruling would be that the federal government cannot make laws under the authority of an international treaty under Article II that does not fall under the federal government's enumerated powers which include among others the power to tax, regulate commerce, establish federal courts, establish and maintain a military, and declare war.

Arguments to overrule *Missouri v. Holland* (1920)

The *Missouri v. Holland* (1920) case is among the more controversial Supreme Court decisions. It held "a treaty which infringes the rights reserved to the states under the Tenth Amendment to the United States Constitution may nevertheless be considered valid if it is made under the authority of the United States and is thus the supreme law of the land." *Missouri v.*

Holland, 252 U.S. 416, 430–31 (1920). Thus, the Court ruled that the 10th amendment is not a barrier to international treaties because the people and the states have delegated to the National Government the power to make treaties. In *Missouri v. Holland,* the Supreme Court decided that even though the Supremacy Clause provides Congress the ability to make treaties that are supreme laws of the land, it can only do so when treaties or its subsequent laws are Constitutional– see 252 U.S. 416, 432 (1920) (discussing U.S. Const. art VI, cl. 2). *Holland* questioned whether treaty power may extend beyond what the Constitution allows. *Id.* In later decisions, the Court has clarified the constitutional restraints and limits of treaty power somewhat as demonstrated in this passage from *Holland*: "It is said that a treaty cannot be valid if it infringes the Constitution, that there are limits, therefore, to the treaty-making power, and that one such limit is that what an act of Congress could not do unaided, in derogation of the powers reserved to the States, a treaty cannot do. An earlier act of Congress that attempted . . . to regulate the killing of migratory birds within the States had been held bad in the District Court. United States v. Shauver, 214 Fed. Rep. 154. United States v. McCullagh, 221 Fed. Rep. 288." *Id*. The case concerned the federal government's express prohibition of killing migratory birds as an example of the federal government going beyond its delegated powers and encroaching on those reserved to the States. For example, an action that would make a law that interferes with Constitutional protections (e.g., restricting religion or speech) would violate an express prohibition of the Constitution. This is different from the federal government overreaching beyond its delegated powers to those expressly reserved to the states or citizens (e.g., education, policing, or property rights).

At issue in *Missouri v. Holland* (1920) was that the President had entered into an international treaty with Great Britain under Article II that was made to protect migratory birds

in the United States' national interest. In 1918, the United States and Great Britain enacted the Migratory Bird Treaty. Then under the convention for the protection of migratory birds, the US legislature passed the Migratory Bird Treaty Act of July 3, 1918, which "prohibited the killing, capturing, or selling of any of the migratory birds protected by the treaty, except as permitted by additional regulations passed by the Secretary of Agriculture." *Id.* The state of Missouri was the plaintiff in this case as the state attempted to prevent Holland who was the defendant and a United States game warden from enforcing the act in this state. The state of Missouri argued that the statute was an example of unconstitutional interference with the rights reserved to the states by the Tenth Amendment to the United States Constitution. The state appealed after the district court dismissed the bill on the grounds that the statute was constitutional. The Supreme Court heard the case and confirmed "A treaty which infringes the rights reserved to the states under the Tenth Amendment to the United States Constitution may nevertheless be considered valid if it is made under the authority of the United States and is thus the supreme law of the land." *Id.*

Justice Holmes gave the majority opinion of the Supreme Court affirming the lower court's dismissal of Missouri's case. The lower court's ruling was that the international treaty was constitutional. Holmes wrote, "The migratory bird treaty and subsequent Migratory Bird Treaty Act are valid exercises of United States government power. A treaty that infringes the rights reserved to the states under the Tenth Amendment to the United States Constitution may nevertheless be considered valid if it is made under the authority of the United States and is thus the supreme law of the land. The Tenth Amendment to the United States Constitution reserves to the states all powers not delegated to the federal government of the United States." *Id.* He went on to explain that under Article 2, Section 2 of the Constitution the federal government has the authority to make treaties and that these treaties become the laws of the land as long as they do

not violate the Constitution. Justice Holmes then continued that because the treaty was made under the authority of the United States, and that the decision made it clear that it applies to birds that are temporarily within the state boundaries, they did not belong to any specific state. Holmes declared, "The federal government routinely carries out its express powers under the Constitution by Acts of Congress regulating activities and functions which happen to fall within the borders of a State, and which would be regulated by the State itself in the absence of the relevant express federal power. There is no reason to treat international treaties differently. An international treaty may regulate activities falling within a State's borders if it is made under the authority of the United States and is thus valid. Similarly, if a treaty is valid, it follows that a statute made to implement the treaty is also valid. The migratory bird treaty is valid, and thus the Migratory Bird Treaty Act passed to enforce the treaty is also valid" *Id*.

The state of Missouri lost the case even though it made a good case for the application of the Tenth Amendment. The opinion of the Court was that the Tenth Amendment alone failed to sufficiently answer the question which asked, "whether a treaty which infringes the rights reserved to the states under the Tenth Amendment to the United States Constitution may be considered valid when an Act of Congress performing the same function would be invalid." *Missouri v. Holland*, 252 U.S. 416, 430–31 (1920). The federal government is given the power to make treaties within Article II of the Constitution, and the Supremacy Clause clarifies that treaties of the United States are the supreme law of the land. Article I, Section 8, gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof." The Justices held that the treaty was

Constitutionally valid because an international treaty can regulate activities "falling within a State's borders," particularly if it is in the national interest *Id.*

Efforts to overrule *Missouri v. Holland*

Attempts have been made to rein in the federal power under Article II that were increased with the *Missouri v. Holland* decision. For example, in the 1950s Senator John Bricker of Ohio led efforts to amend the Constitution in ways that would essentially overrule the *Holland* decision. His colleagues and he (conservative senators) at the time were concerned about the UN Charter that specified human rights treaties (i.e., the Universal Declaration of Human Rights 1948). These senators were worried that the provisions in the Charter would give Congress the power to enact federal civil rights legislation that extended beyond its constitutional powers. Some of the Bricker amendment supporters, such as conservative Southern Democrats, expressed concern that these treaties could be used and interpreted in such a way that they would dismantle racist, segregationist state laws like those under Jim Crow.[1] Missouri lawmakers and others were concerned that treaties could intrude in state and local jurisdictions which could diminish U.S. sovereignty, expand the power of the federal government, reduce states' rights, and possibly increase the chances of a more global government (by giving other governments too much involvement in US policies). Continued efforts to overrule *Holland* have so far been unsuccessful.

The *Bond* Decision and Article II

[1] Jeffrey L. Dunoff, Monica Hakimi, Steven R. Ratner, David Wippman, International Law Norms, Actors, Process: A Problem-Oriented Approach (5 ed. 2020).

Tyler Wilson-Menting - International Law - Professor Dunlap

The Supreme Court case that has had the most potential to overrule *Missouri v. Holland*, was *Bond v. U.S.*, 572 U.S. 844, 848 (2014). In this case, Bond was charged under the Chemical Weapons Convention (CWC), an international convention designed to prevent the use of chemical weapons on the international stage. Bond's spouse impregnated her friend, and Bond allegedly used household chemicals to try to poison her. Under the statute it is illegal for a person knowingly to "possess[ ] or use . . . any chemical weapon," 18 U. S. C. §229(a)(1). A "chemical weapon" is "[a] toxic chemical and its precursors, except where intended for a purpose not prohibited under this chapter." §229F(1)(A). A "toxic chemical" is "any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere." §229F(8)(A). Federal prosecutors charged Bond with violating this section of the CWC. Bond then moved to dismiss the chemical weapons charges on the ground that the Act violated the Tenth Amendment. The District Court denied her motion. Bond pleaded guilty, reserving the right to appeal, and appealed to the Third Circuit Court. The Third Circuit Court initially ruled that she lacked standing to raise her Tenth Amendment challenge, but the Supreme Court concluded unanimously that Bond had standing regarding a federal statute enforcing the CWC in her case because of the intrusion on police power generally reserved to the states under the 10th amendment. On remand, the Third Circuit rejected her Tenth Amendment argument and her additional argument that Section 229 did not reach her conduct. She appealed to the Supreme Court. *Bond v. U.S.*, 572 U.S. 844, 848 (2014).

When the Supreme Court decided that the CWCA did not apply to Bond, the constitutional question was avoided. As a matter of judicial restraint, courts try to avoid ruling on

constitutional issues when less-intrusive approaches are available (e.g., statutory interpretation). Striking down the statute would tie Congress's hands and create a binding constitutional rule. Interpreting the statute narrowly affected only that statute and left Congress free to overrule the Court if it disagreed. Judicial restraint, until recently, was one of the hallmarks of conservative judicial theory.

The Supreme Court held in the *Bond* case that before a statute can be interpreted as intruding on powers traditionally reserved for the states, clear proof of congressional intent is needed. States have their own legislative powers including police power and the power to create laws regulating local criminal behavior. Critically, the federal government can exercise only the enumerated powers granted in the Constitution. The federal government does not possess broad police power reserved for the states. *Id.*

In 2014, the Supreme Court overturned Bond's conviction unanimously. Justice Roberts wrote the majority opinion joined by Justices Kennedy, Ginsburg, Breyer, Sotomayor, and Kagan, all of whom held that the Chemical Weapons Act did not reach Bond's conduct. The decision dodged the constitutional questions presented. However, Justices Scalia, Thomas, and Alito argued that if the statute was found to reach her conduct, then this act would exceed Congressional constitutional authority. The Bond case allowed the Supreme Court to reexamine the *Missouri v. Holland* holding. Bond's case brief explained: "This case raise[s] fundamental questions about whether there are any limits on Congress's authority to implement an international treaty," and that upholding federal power, in this case, would "provide a roadmap for circumventing nearly every limitation on federal power [the Supreme] Court has ever recognized." *Id*. By dodging the question in this case, the Supreme Court has further reinforced a legal situation that provides potentially nearly unlimited power to the federal government.

Tyler Wilson-Menting - International Law - Professor Dunlap

Justice Roberts' majority opinion in this case describes his concerns, particularly the constitutional structure that grants state power to control local criminal activity and police power. He wrote the rationale for the decision as follows:

> Because our constitutional structure leaves local criminal activity primarily to the States, we have generally declined to read federal law as intruding on that responsibility unless Congress has indicated that the law should have such reach. The Chemical Weapons Convention Implementation Act contains no such clear indication, and we accordingly conclude that it does not cover the unremarkable local offense at issue here. *Id*.

In deciding that Bond's activities failed to meet the criteria stipulated in the treaty, the justices were able to avoid formally ruling on the Tenth Amendment question. Even though the decision failed to challenge *Missouri v. Holland*, some of the Justices did write concerned dissents while still supporting the result. Justice Scalia argued that Bond violated aspects of the Act because she did use a chemical that was intended to cause harm or death to another person. He stated:

> the correct question here is whether the Act is constitutional as applied to Bond's case. Although the Treaty Clause gives the president the power to make treaties, and the Necessary and Proper Clause gives Congress the authority to make all laws necessary and proper for the execution of any enumerated power, these authorizations do not necessarily mean that the president's power to make treaties is akin to a power to implement already-existing treaties. If this were so, then the federal government would be empowered to do anything it pleased, as long as it had a related treaty. *Id*.

Scalia continued that logic by deciding that the treaty failed to adequately reach Bond's conduct, and "that the statute is an impermissible exercise of federal power, the majority has allowed the executive branch and the Senate's exercise of the treaty power to trump basic federalism

principles." *Id*. While this paragraph gets overshadowed by the overarching decision, it is an important one because it demonstrates that some justices were aware that too much power was given to the federal government within the context of using treaty power to potentially trample the 10th amendment.

There is a need for limited powers of the national government. The States have broad authority to enact legislation for the public good—what we have often called a "police power." The federal government, by contrast, has no such authority and "can exercise only the powers granted to it," *McCulloch v. State,* 17 U.S. 316 (1819). Allowing *Missouri v. Holland* to stand enables the federal government to use international treaties to usurp the powers stated in the 10th amendment.

In conclusion, the *Bond* decision allowed the Supreme Court to overrule *Missouri v. Holland*. In the *Bond* case, the Court was asked to decide whether whenever the United States implements a treaty with the Article II process, Congress possesses the constitutional authority to enact laws to enforce the treaty, even when those laws extend beyond Congress's delegated powers. The Court in the *Bond* case decided not to address the question, but in their decisions, some Justices expressed concerns about the potential for federal government overreach.

The Court should have decided this issue clearly and decisively to set limits on federal power under Article II. The federal government should not be allowed to pass a law or enter into an international treaty that involves rights reserved to the states under the 10th Amendment. The Court should have overruled *Missouri v. Holland* in the *Bond v. U.S.* case. While national security is paramount and chemical weapons should be banned, states should be able to choose how to enforce U.S. obligations under the CWC. *Missouri v. Holland* eroded the power of the

states by giving the federal government a mechanism to make laws without appropriate constitutional authority.

Applicant Details

First Name	**Rachael**
Last Name	**Wolfram**
Citizenship Status	**U. S. Citizen**
Email Address	**R.wolfram@Rutgers.edu**
Address	**Address** **Street** **220 B N. Lenola Rd** **City** **Moorestown** **State/Territory** **New Jersey** **Zip** **08057**
Contact Phone Number	**6097440528**

Applicant Education

BA/BS From	**University of South Carolina-Columbia**
Date of BA/BS	**December 2019**
JD/LLB From	**Rutgers University School of Law--Camden** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23101&yr=2011**
Date of JD/LLB	**May 31, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Rutgers Journal of International Law and Human Rights**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Buza, Lori
loriabuzaesq@gmail.com
Roselli, Vito
Rachwolfram@gmail.com
Hernandez, Jason
Jason.c.hernandez@rutgers.edu
Johnson, Thea
thea.johnson@rutgers.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

RACHAEL WOLFRAM, NREMT
R.Wolfram@Rutgers.edu | (609) 744-0528 | Moorestown, NJ

June 12, 2023

The Honorable Juan Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Juan Sanchez,

I am a rising third-year law student at Rutgers Law School and am writing to apply for a clerkship in your chambers for the 2024-2025 term. My interest in clerking for you stems from a deep admiration for your many qualities as a jurist and dedication to ensuring a fair legal process for the American people as seen in your opinion for *D'Amario v. Weiner.* It would truly be an honor to both serve and learn as a law clerk to Your Honor.

My various roles have assisted me in developing the skills needed to succeed as a judicial clerk and support the work of the Court. I currently work for the F.B.I. as a Legal Fellow, where I have refined my research and writing skills while working alongside the Chief Director of Counsel, Assistant Director of Counsel, Special Agents, and Intelligence Analysts to identify threats to the American people. As you know, this work requires the ability to maintain the delicate balance of public safety and respecting the constitutional rights of those investigated. In furtherance of this work, I have prepared memos on constitutional and jurisdictional issues. In my role as a judicial extern for The Honorable Stephanie Sawyer in the Philadelphia Court of Common Pleas, Criminal Division I completed several intra-chambers research memos on institutional sexual assault, Nebbia orders, and judicial discretion.

At the law school, I am the rising Executive Editor of the Rutgers International Law and Human Rights Journal as well as the Rutgers Immigrant Justice Fellow and an Eagleton Fellow. I am also one of three Rutgers Law students who were selected to participate in a confidential research project for the Women's Law Project of Pennsylvania. Further, my essay on the gender disparity in promotion in private law firms was published in the New Jersey Women Lawyers Association's 2023 Gala Journal.

In addition to my research and writing skills, I have strong interpersonal and communication skills and understand the importance of accuracy and diligence in my work, as highlighted in my experience as a New Jersey Emergency Medical Technician. This skillset has proven valuable in my legal work as well. Given the gravitas of my various roles, I endeavor for all my work product to be thorough and accurate.

I hope to have the opportunity to discuss my interest in continuing my career of public service for the people of New Jersey as your law clerk. Thank you in advance for your time and consideration and I look forward to hearing from you.

Respectfully,

Rachael L. Wolfram, NREMT

RACHAEL WOLFRAM, NREMT

R.Wolfram@Rutgers.edu | (609) 744-0528 | Moorestown, NJ

EDUCATION

RUTGERS UNIVERSITY SCHOOL OF LAW, Camden, NJ **GPA: 3.57**
J.D. expected May 2024
Fellowships: Immigrant Justice Fellow; Eagleton Fellow, *Forthcoming Fall 2023*
Journal: Rutgers International Law and Human Rights Journal, *Executive Editor*
Honors: Dean's List, *Fall 2021, Spring 2022*; Constitutional Law Certificate of Achievement*; New Jersey Women Lawyer's Association, *2023*; Association of the Federal Bar of New Jersey, *2023*; Confidential Project with the Women's Law Project of Pennsylvania
Research: Legal Services of New Jersey
Externships: Women's Law Caucus; Employment Law Society; If/When/How, *Events Coordinator*;
Activities: Italian American Law Students Society, *Professional Liaison*

UNIVERSITY OF SOUTH CAROLINA, Columbia, SC **GPA: 3.5**
B.A. in Political Science, Social Work, *cum laude*, December 2019
Honors: Graduated with Leadership Distinction; Top Attorney Award (2018); Sims Scholar
Thesis: *Why Aren't They Terrorists? How Racial Biases Create Gaps in United States National Security Policy*
Activities: University of South Carolina Mock Trial Team; Student Survivors for Survivors; Athletics

EXPERIENCE

FEDERAL BUREAU OF INVESTIGATION, Philadelphia, PA
Legal Fellow June 2023 – Present
Works directly under the Chief Director of Counsel. Reviews and prepares internal confidential memoranda. Conducts legal research pertaining to the Constitution of the United States. Conducts legal research and memos on cases that further the safety of the American people.
Honors Intern June 2022 – May 2023
Worked directly with Agents, and Intelligence Analysts to support investigations of the White-Collar, Crimes Against Children, Violent Crimes/Gangs, and Counterterrorism Squads. Obtained Top Security Clearance.

THE HONORABLE STEPHANIE SAWYER, COURT OF COMMON PLEAS, Philadelphia, PA January 2023 – May 2023
Judicial Intern
Assisted her Honor's law clerk in chambers. Completed legal research utilizing Westlaw for intra-chambers memorandums and judicial opinions. Prepared court documents.

DOROSHOW, PASQUALE, KRAWITZ & BHAYA, Wilmington, DE January 2022 – May 2022
Law Clerk
Handled confidential client information. Prepared legal documentation and memoranda. Performed legal research and analysis utilizing LexisNexis. Assisted with client interviews and deposition preparation. Filed documents with the appropriate courts.

MOORESTOWN EMERGENCY MEDICAL SQUAD, Moorestown, NJ April 2020 – Present
Emergency Medical Technician (EMT)
Provides emergency medical care in an active 9-1-1 system. Documents patient records in compliance with HIPPA.

TABULA RASA HEALTHCARE, Moorestown, NJ May 2020 – January 2022
Administrator, Learning and Development
Created Continuing Education courses for doctors, nurses, pharmacists, and pharmacy technicians. Drafted and edited client facing correspondence. Documented confidential company information.

PUBLICATIONS

Equality in Promotion in Private Law Firms, New Jersey Women Lawyer's Association Gala Journal (2023)

SKILLS/INTERESTS

American Sign Language (Conversational) | French (Proficient) | Spanish (Elementary) | Girl Scouts | Licensed New Jersey EMT | Rock Climbing | Philadelphia Phillies | Top Security Clearance |

* Attended Widener University Delaware School of Law 2021-2022

RECORD OF: RACHAEL WOLFRAM

STUDENT NUMBER: 184000004

RECORD DATE: 06/06/23 PAGE: 1

Fall 2022 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
INT'L&HUM.RGHTS JRNL	23	600	713		01	0.5		PA
FAMILY LAW SYSTEMS	24	601	564		01	3.0		A-
PROFESS RESPONSIB	24	601	582		11	2.0		B+
ALT DISPTE RESOLUTN	24	601	591		01	2.0		A
ESTATES AND TRUSTS	24	601	627		11	3.0		B+
CRIM PRO:ADJUDCTN	24	601	656		01	3.0		B+
IMMIG COMM JUST PRAC	24	601	793		01	2.0		A-
TOTAL CREDITS ATTEMPTED:						15.5		

DEGREE CREDITS EARNED: 15.5 TERM AVG: 3.533 CUMULATIVE AVG: 3.533

Spring 2023 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
INT'L&HUM.RGHTS JRNL	23	600	713		01	0.5		PA
CONSTITUTIONAL LAW	24	601	506		02	4.0		A
NEGOTIATION	24	601	544		11	2.0		A-
EVIDENCE	24	601	556		11	3.0		A-
EMPLOYMNT DISCRIM	24	601	605		01	3.0		B
JUDICIAL EXTERNSHIP	24	601	790		01	2.0	P	PA
TOTAL CREDITS ATTEMPTED:						14.5		

DEGREE CREDITS EARNED: 30.0 TERM AVG: 3.613 CUMULATIVE AVG: 3.568

Fall 2023 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
INT'L&HUM.RGHTS JRNL	23	600	713		01	1.0		
ADV IMMIG SNCTRY SEM	23	600	771		02	2.0		
NJ LAW AGAINST DISCR	24	601	531		20	2.0		
PRETRIAL ADVOCACY	24	601	597		20	2.0		
WELLNESS FOR LAWYERS	24	601	645		02	2.0		
EAGLETON FELLOWSHIP	24	601	731		01	0.5		J
DOMESTIC VIOL CLINIC	24	601	772		01	6.0		
TOTAL CREDITS ATTEMPTED:						15.5		

DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:

Last Term Information

LAST TERM CREDIT HOURS:	14.5
LAST TERM CREDITS IN GPA:	12.0
LAST TERM POINTS IN GPA:	43.4
LAST TERM CUMULATIVE CREDITS IN GPA:	27.0
LAST TERM CUMULATIVE POINTS IN GPA:	96.3

***** END OF TRANSCRIPT *****

10/18/22 Widener University Page 1 of 1

Rachael Wolfram

220B N. Lenola Road
Moorestown, NJ 08057

Rachael Wolfram

SSN: *** ** 7363
Major:

Course	Title	Grade	Hrs Att	Hrs Cmpt	Hrs to Calc	Qual Points	
LAWD-518	TORTS I	B+	4.00	4.00	4.00	13.2	
LAWD-515	PROPERTY I	B+	4.00	4.00	4.00	13.2	
LAWD-508	CONTRACTS I	A-	4.00	4.00	4.00	14.8	
LAWD-6092	APPLIED LEARNING LAB	P	1.00	1.00	0.00	0.0	
LAWD-509	LEGAL METHODS I/ANALYSI	B-	3.00	3.00	3.00	8.1	
	21/FA Term Totals:		16.00	16.00	15.00	49.3	GPA = 3.287
	Cumulative Totals:		16.00	16.00	15.00	49.3	GPA = 3.287
	Academic Standing for 21/FA: Dean's Honors						
LAWD-510	LEGAL METHODS II	B+	2.50	2.50	2.50	8.3	
LAWD-505	CRIMINAL LAW	A	3.00	3.00	3.00	12.0	
LAWD-516	PROPERTY II	A	2.50	2.50	2.50	10.0	
LAWD-502	CIVIL PROCEDURE I	B+	4.00	4.00	4.00	13.2	
LAWD-6171	TORTS II	A-	2.00	2.00	2.00	7.4	
LAWD-6170	CONSTITUTIONAL LAW I	A+	2.00	2.00	2.00	8.0	
	CERTIFICATE OF ACHIEVEMENT						
	22/SP Term Totals:		16.00	16.00	16.00	58.9	GPA = 3.678
	Cumulative Totals:		32.00	32.00	31.00	108.2	GPA = 3.489
	Academic Standing for 22/SP: Dean's Honors						

End of Grading Information

END OF DOCUMENT

Widener University

Dr. Lori Ann Buza

Chair, Accounting & Legal Studies Department

Full Professor/ Advisor Legal Studies

Attorney at Law - N.J. & D.N.J. Cts.

Saint Peter's University

Jersey City, NJ 07306

201-761-6213

June 12, 2023

RE: Rachael Wolfram / Judicial Law Clerk Position

Dear Judge:

I am honored to write a letter of recommendation for Rachael Wolfram in support of her application for a position in your chambers as a judicial law clerk for the 2024-2025 term. By way of background, I am the Chair of the Accounting and Legal Studies Department and a tenured, Full Professor of Law at Saint Peter's University, NJ, as well as an Adjunct Professor of Law at Rutgers Law School in Camden, NJ. I am also a licensed attorney, admitted to the practice of law in New Jersey, working with K.S. Branigan Law, P.C., as Counsel and Arbitrator, serving as a panelist for the American Arbitration Association. In my work as both an attorney and, in particular, as Rachael's instructor and ongoing mentor, I feel I am qualified to recommend her for the role of judicial law clerk within your chambers. She is both committed and dedicated to her law school, her future practice of law, and service to the people of New Jersey.

I have taught Rachael the course: Alternative Dispute Resolution, at Rutgers Law School in which she earned a high A. In this challenging course, Rachael stood out from her classmates with sound legal analysis and a maturity of writing beyond her years. I have gotten to know what Rachael's passions are, including the advancement of women in the law. Though she is a first-generation college and law student, she has managed to place in the top ten percent of her law school class. She was always a bright student; I understand that she completed two Bachelor's degrees at the young age of 19! Rachael works very hard in 3 separate jobs to cover her costs of law school while still excelling in her studies. In one, she works as a Legal Fellow

(with top security clearance) for the FBI under the Chief Director of Counsel on cases that further the safety of the American people against foreign and domestic threats. In another, she is a Rutgers Immigrant Justice Fellow, wherein she works to ensure adequate representation is available for international students. Finally, she is a paramedic/EMT helping her community for the last several years. Indeed, Rachael spent 2 years (full time) before law school serving as an EMT/Paramedic during the height of the covid-19 pandemic and our community's greatest time of need. She should be commended for this selfless work during our nation's time of crisis.

Rachael has received top distinctions and rank at law school and works in the aforementioned prestigious roles. Rachael has been selected as the sole recipient for both the New Jersey Women Lawyer's Association and the Association of the Federal Bar of New Jersey's 2023 Scholarships, both of which are extremely competitive and only awarded to one student from each of the New Jersey law schools each year. Rachael is also a member of the incoming Eagleton class. The Eagleton Fellowship only accepts 25 of the best and brightest from all of Rutgers Graduate Programs across all campuses who show promise to be New Jersey's future political leaders and advocates.

Further, Rachael has continued to perform substantial volunteer work. For instance, she is a Girl Scouts Leader mentoring young girls in her community, and she also presides over Moorestown High School Mock Trial scrimmages to help the young who have interest in the law. She has also volunteered as an intern with the Honorable Judge Stephanie Sawyer this year, a position in which she has expressed tremendous gratitude to have the mentoring/tutelage of the judge.

I personally find Rachael to be extremely bright, caring, and passionate about the law and citizens of New Jersey. She exhibits a love of learning and displays a sincere, driven motivation that I have rarely seen in a woman of her years. Overall, Rachael has been a great student who exhibits dedication and a deep commitment to a successful future in the law. Rachael has been a model student and mentee who remains humble and eager to learn. I feel quite certain she will shine equally bright as a lawyer once she graduates. Her kind and giving heart drives her to ongoing service to her community.

In closing, I recommend Rachael Wolfram without hesitation for a judicial clerkship within your chambers for the 2024-2025 term. Should you wish to discuss any of the above, please do not hesitate to contact me at my cell: (908)334-7298.

Sincerely,

/s/ Lori A. Buza

Lori Ann Buza

U.S. Department of Justice

Federal Bureau of Investigation

FBI Philadelphia
South Jersey Resident Agency
PO Box 795
Cherry Hill, NJ 08003

February 21, 2023

Re: Letter of Recommendation for Rachael Wolfram

To whom it may concern,

I am writing this letter to recommend Rachael Wolfram for the role of Judicial Law Clerk. I run the South Jersey Resident Agency (SJRA) of the FBI Philadelphia Division where I supervise special agents, intelligence analysts, professional staff and task force officers. I represent the FBI to our community partners, public, and private sectors in a three-county area in southern New Jersey. SJRA is provided an intern not only as a learning experience for the intern, but to assist in the daily operations of the office. I have had the pleasure of working with a number of young, competent interns over my 26 year career, but have been most impressed with our latest intern, Rachael Wolfram. After reading the prospective intern resumes, I lobbied for Rachael because her particular skill sets were what we needed, specifically her legal schooling and an obvious work ethic. She reported in June 2022 and did not disappoint. In my onboarding interview with Rachael, I was impressed with her bearing and maturity. I initially assigned her administrative tasks to assist my office manager but quickly realized her potential as an asset to our investigative teams. I assigned her data entry tasks in support of our top white collar and violent crime priority cases. She fully engaged with the investigators and demonstrated a keen analytical mindset. Both investigators and analysts made it a point to praise her value and fully immersed her to more complicated analytical efforts. Rachael has risen to every challenge, consistently produces top quality products, and defends her conclusions with sound arguments.

It was my good fortune Rachael was assigned to the SJRA. She is the consummate professional, mission oriented, and represents the best of our country's future leaders. I highly recommend Rachael Wolfram for any position of responsibility. For potential employers looking for additional observations, I can be reached at (856) 994-8488.

Respectfully,

Vito D. Roselli
Supervisory Senior Resident Agent
FBI Philadelphia, SJRA

June 08, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is with great pleasure that I recommend Ms. Rachael Wolfram for a clerkship in your chambers. I have become well-acquainted with Ms. Wolfram over the past year, first as a student in my Immigrant Community Justice Practicum course, and later, as an Immigrant Justice Fellow supporting the Immigrant Justice Clinic and the Rutgers Immigrant Community Assistance Project (RICAP). Obversing Ms. Wolfram in both classroom and professional settings, I am certain her dedication and analytical acuity will make her an exceptional law clerk and superlative attorney.

Ms. Wolfram quickly emerged as a leader in the classroom by making valuable contributions to discussions that evidenced her adept understanding of doctrinal immigration law and its nuanced application to interviewing and counseling clients. The course culminated with both simulated and real-life immigration legal consultations. Ms. Wolfram's thorough and thoughtful preparation paired with her ability to identify relevant facts as they relate to benefits resulted in outstanding written work product and skills performance. Her conscientious nature and flawless interview plan ensured she could build rapport and sensitively elicit personal history to discern eligibility for relief under federal immigration law. Ms. Wolfram's cogent post-interview memos confirmed her facilty with the law and offered insightful legal analysis. I was also impressed with her enthusiasm and commitment to service as she gladly volunteered to interview overflow clients at our community legal screening event.

As the Director of RICAP, a campus-based immigration legal service, I was delighted to learn Ms. Wolfram applied for the Immigrant Justice Fellowship. She was one of two students selected to work on immigration cases and to organize a Rutgers – Camden Naturalization Oath Ceremony in collaboration with the United States Citizenship and Immigration Services (USCIS), among other co-sponsors. I will admit, I had concerns regarding whether Ms. Wolfram could balance the responsibilities of the fellowship alongside her demanding professional job as an emergency medical technican, internship with the Federal Bureau of Investigation, editorial role on a journal, and several other co-curricular commitments. However, due to her innate maturity, organizational skills, and indefatiguable nature, she has been utterly reliable – completing all deliverables promptly and often anticipating tasks before they were assigned. New to immigration practice, Ms. Wolfram learned quickly as she researched and indexed country conditions for an asylum case, interviewed clients, and drafted filings for USCIS. I would gladly hire her again. In fact, due to her stellar performance, we have offered her a second fellowship year to pursue more advanced case work.

I am sure that Ms. Wolfram will be an outstanding addition to your chambers. She has received numerous awards recognizing her dedication and achievements, including the Constitutional Law Certificate of Achievement, New Jersey Woment's Lawyer Association Award, and Association of the Federal Bar of New Jersey Award, all of which highlight the manner in which she is perceived by our legal community. Please do not hesitate to contact me for any further information.

Sincerely,

Jason C. Hernandez, Esq.
Director, RICAP and Adjunct Professor of Law

June 08, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to enthusiastically recommend Rachael Wolfram for a clerkship in your chambers. I have gotten to know Rachael as a student in my Criminal Procedure and Evidence classes. I am consistently impressed with her engagement, intelligence and thoughtfulness. She is an exceptional student and would make an excellent clerk.

I first got to know Rachael in my Criminal Procedure class last semester. Rachael was consistently prepared, asked insightful and thoughtful questions and showed tremendous enthusiasm for the class. She stood out among an already very high performing class. She's exactly the sort of student that a professor enjoys having in class because she understands the doctrine clearly, but is also ready to dive into deeper discussions on policy, ethics and broader questions about the materials. She has brought that same energy to my Evidence class this semester. I use the problem method in Evidence. I can count on Rachael to volunteer to answer hypos and role-play as a lawyer or witness (which can often be difficult in a big class!)

I have also gotten to know Rachael outside of class. It is clear from our conversations that she has thrown herself into life at Rutgers Law after transferring here from Widener and is already an important member of the community. She is on the Rutgers International Law and Human Rights Journal, and she serves as a member of the Women's Law Caucus and If/When/How, and is an Immigration Law Fellow. In her role as a fellow, she helped plan a beautiful and moving naturalization ceremony at the law school. I've been so impressed that she has managed to do all of this while also working as an EMT. It does not surprise me, though, that Rachael is an EMT. She's calm, thoughtful, easy to talk to and has a great sense of humor – all the things one needs to be a terrific and caring EMT (and lawyer, for that matter).

I recommend Rachael for a clerkship without hesitation. Please feel free to be in touch with any questions.

Sincerely,

Professor Thea Johnson
Rutgers Law School

RACHAEL WOLFRAM, NREMT
R.Wolfram@Rutgers.edu | (609) 744-0528 | Moorestown, NJ

WRITING SAMPLE

The attached writing sample is a draft order that I drafted as an assignment when I was a judicial extern in the Chambers of the Honorable Stephanie Sawyer in the Philadelphia Court of Common Pleas, Criminal Division. The assignment was to respond to Appellant's 1925(a) motion with an opinion explaining the legal rationale and validity of her Honor's initial sentencing of the Appellant on the charges of institutional sexual assault and indecent assault – without consent of others. It was the preference of Chambers to include parallel citations. I performed all of the research and this work is substantially my own. All identifying facts and names have been altered for confidentiality purposes. For the sake of brevity, I have redacted the section pertaining to Indecent Sexual Assault – Without Consent of the Other and the Conclusion. I am submitting the attached writing sample with the permission of Chambers.

OPINION

The instant matter is an appeal from the judgment of sentence imposed on December 5, 2022, by this Court following Arvin Appellant's (hereinafter "Appellant") conviction of institutional sexual assault, 18 Pa.C.S.A § 3124.2(A21) and indecent assault — without consent of others, 18 PA.C.S.A § 3126(A1) by this Court. The Appellant challenges the sufficiency and weight of the evidence supporting his convictions. (*See*, para 1, Statement of Errors Complained of on Appeal filed January 27, 2023). Appellant challenges the statute's definition of "school" as applied to a person who is an "employee" of a "school" and states that it was not intended by the Pennsylvania Legislature to apply to teachers at colleges or universities. (*See*, para 2, Statement of Errors Complained of on Appeal filed January 27, 2023). Further, Appellant contends that the lower court abused its discretion in granting the Commonwealth's pre-trial motion to preclude the defense's evidence of testimony from a witness. (*See*, para 3, Statement of Errors Complained of on Appeal filed January 27, 2023). Appellant contends that the guilty verdict rendered should therefore be vacated.

I. RELEVANT FACTS

On August 16, 2022, the Appellant was found guilty of institutional sexual assault and indecent assault-without consent of others. Following the conviction this Court Ordered an assessment by the Sexual Offenders Assessment Board (hereinafter "SOAB"). The SOAB deemed that the Appellant was not a sexually violent predator (hereinafter "SVP") under Pennsylvania law. Subsequently, the Appellant was advised of his 25-year classification under Tier II of the Sex Offender Registration and Notification Act (hereinafter "SORNA"), requiring supervision by the Sex Offender Unit. The Court sentenced the Appellant to 6 to 12 months of house arrest followed

by 5 years of reporting probation for institutional sexual assault and indecent assault without consent. This Court ordered that the Appellant should have no unsupervised contact with minors, except, his own children, and a stay-away order was issued for the complaining witness.

During the underlying trial, two witnesses testified. Complainant, Sally Student (hereinafter "Student") testified that on the evening of February 5, 2020, at 7:30 p.m. she had a chamber music class with her teacher, Appellant, at The Hall on The University main campus in Philadelphia. PA. N.T. Trial, 8/16/22, at 30. Student testified that when she arrived at the classroom the students present were at the end of a studio rehearsal but left the classroom shortly after her arrival. *Id.* at 34. Student's testimony is that she, her chamber ensemble partner and Appellant remained in the classroom to perform a repertoire piece. *Id.* at 35. Shortly after Student and her chamber ensemble partner performed, Appellant dismissed Student's partner but instructed Student to stay behind and practice more due to a previous incomplete grade. *Id.*

While alone in the classroom with the door closed, Appellant touched Student's hair, kissed her forehead, and told her he was happy that she was there. *Id.* at 37. Student further testified that Appellant told her to play the piece that she was working on in his class. *Id.* at 38. Student then testified that she continued to play the piano through the section she was working on and when she finished, Appellant stood her up and embraced her with one hand wrapped around her back and the other hand under the collar of her shirt as he kissed the top of her forehead. *Id.* Thereafter, Student testified that Appellant sat her back down at the piano and instructed her to continue playing. *Id.* at 39. Student testified that the Appellant then stopped her from playing the piano and stood her back up while embracing her and pushing his erect penis against her thigh. *Id.* at 39-40. Student then testified that Appellant with his hands wrapped around her chest touching her breast, then pulled her down onto his lap as he was sitting on the piano bench. *Id.* at 40.

Student's testimony is that the Appellant then began to turn her toward him as he kissed different areas of her face while placing his hands under her shirt onto the bare skin of her back. *Id.* at 41-42. Student testified that as the Appellant was engaging in this conduct, he made comments about her appearance and how he thought she was special. *Id.* at 42. Student then testified that the Appellant was stimulating his penis as he moved her on his lap. *Id.* Student then testified that the Appellant caressed the sides of her breast, stood her back up, and began to dance with her, then again instructed her to sit back down at the piano and play. *Id.* at 43. Next, Student testified that the Appellant stopped her from playing again, and at this time he was sitting at a piano next to her where he proceeded to lift her feet from the floor, put them onto his lap, remove her shoes and socks, and then using her feet to stimulate his penis. *Id.* at 44-45.

Next, Commonwealth's witness Sharon Barber (hereinafter "Barber") testified that she had first met Student while attending The University and that the two had lived together during her senior year of school as roommates from August 2019 through the Spring of 2020. *Id*. at 114-15. Barber testified that she had returned to their shared apartment after winter break in the January of 2020. *Id*. at 116-17. On January 29, 2020, Student confided in Barber about her professor, the Appellant, making her uncomfortable. *Id*. at 117-18. Barber testified that at that time, Student was not sure whether to report the conduct or not. *Id.*

Barber testified that on February 5, 2020, she was aware that Student had a piano rehearsal with the same professor who was making her uncomfortable. *Id.* at 119. She reached out to Student via text message to make sure she was feeling okay. *Id.* Student had messaged Barber that she was alone with the professor and another female student. *Id.* The other female student had left and now she was alone with the professor. *Id.* Barber offered to come to the classroom with Student, but Student had said she planned to be leaving soon and would come to her. *Id.* Barber then received

a phone call from Student saying that she could not wait to report anymore. *Id.* at 120. Barber sent her resources and instructed Student to put all her clothes in a brown paper bag. *Id.* The two of them later had a conversation about what had happened later that same night. *Id*. at 121-22.

Student told Barber that the Appellant had removed her shoes and placed her feet on his penis. *Id.* at 122-23. Appellant also made Student dance with him against his penis and held her close. *Id.* Barber then testified that Student had gone to the police to report the incident on February 8, 2020, and also made a Title IX report. *Id.* Barber also gave a statement about what happened to the Title IV investigators. *Id*. at 123-24.

The Commonwealth and the Defense brought forth several stipulations. The first stipulation is that, if called to testify, Shawn Staples would testify that he is employed as a forensic scientist with the Philadelphia Trace Laboratory and is an expert in the area of trace analysis and forensic science. *Id.* at 131-33. His reports about DNA swabs taken from the clothing of Student were memorialized as Commonwealth's Exhibit 5. *Id*. at 133. The second stipulation is that, if called to testify, Tammy Hefner would testify that she is a forensic scientist employed with the Philadelphia DNA laboratory and is an expert in the field of forensic DNA analysis. *Id*. at 134-38. Tammy Hefner's findings were memorialized as Commonwealth Exhibit 8. *Id.* at 138-39. The Appellant's DNA was found consistent with at least two of the seven samples taken. *Id.* The third and final stipulation is that, if called to testify, twenty-two witnesses that were friends, students, and coworkers would testify to the Appellant's representation in the community for law-abiding and peacefulness. *Id.* at 143-47.

II. APPLICABLE LAW

A. STANDARD OF REVIEW

The standard of review applied in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact finder to find every element of the crime beyond a reasonable doubt. *Commonwealth v. Tucker*, 143 A.3d 955, 964 (Pa. Super. 2016), appeal denied, 641 Pa. 63, 165 A.3d 895 (2017) (quoting *Commonwealth v. Hansley*, 24 A.3d 410, 416 (Pa. Super. 2011). In applying [the above] test, the appellate court may not weigh the evidence and substitute their judgment for the fact finder. *Id.* In addition, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. *Id.* Any doubts regarding a defendant's guilt may be resolved by the fact finder unless the evidence is so weak and inconclusive that as a matter of law, no probability of fact may be drawn from the combined circumstances. *Id.* The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. *Id.* Moreover, in applying the above test, the entire record must be evaluated, and all evidence actually received must be considered. *Id.* Finally, the [trier] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part, or none of the evidence. *Id.*

B. WEIGHT OF THE EVIDENCE

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. *Commonwealth v. Small*, 559 Pa. 423, [435,] 741 A.2d 666, 672-73 (1999). An appellate court cannot substitute its judgment for that of the finder of fact. *Id.* Thus, we may only reverse the verdict if it is so contrary to the evidence as to shock one's sense of justice. *Id.* Moreover, where the trial court has ruled

on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. *Commonwealth v. Champney*, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003), *cert. denied*, 542 U.S. 939, 124 S.Ct. 2906, 159 L.Ed.2d 816 (2004). Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim. *Id.* It must also be noted that a challenge to the weight of the evidence is "one of the least assailable reasons for granting or denying a new trial." *Thompson v. City of Philadelphia*, 493 A.2d 669, 671 (Pa. 1985).

C. INSTITUTIONAL SEXUAL ASSAULT

D. INDECENT SEXUAL ASSAULT WITHOUT CONSENT

E. ADMISSION OF EVIDENCE BY LOWER COURT

Traditionally, in reviewing trial court decision-making regarding the admissibility of evidence, an appellate court determines whether the lower tribunal abused its discretion. *Paden v. Baker Concrete Constr. Inc.*, 540 Pa. 409, 658 A.2d 341 (1995). When we review the ruling of a suppression court we must determine whether the factual findings are supported by the record. When it is a defendant who has appealed, we must consider only the evidence of the prosecution and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted. *Commonwealth v Hicks*, 652 Pa. 353, 208 A.3d 916 (2019). Assuming that there is support in the record, we are bound by the facts as are found and we may reverse the suppression court only if the legal conclusions drawn from those facts are in error. *Id.*

III. LEGAL ANALYSIS

Review of the facts presented herein demonstrate the lack of merit to the instant appeal. The Appellant was found guilty of institutional sexual assault and indecent sexual assault without consent. There was no evidence offered by the defense which contested the credible corroborated testimony of the complaining witness, reporting witnesses, DNA evidence, and — most importantly — the Appellant's admission of the conduct. N.T. Trial, 8/16/22, at 30.

Appellant challenges the court's ruling on three grounds. (*See*, Statement of Matters Complained) Appellant first claims that the evidence was insufficient as a matter of law to prove all the elements of indecent assault beyond a reasonable doubt. Second, Appellant claims the term "school" as used in 18 PA CS 3126(a)(1) does not apply to universities or colleges. Finally, Appellant claims the lower court abused its discretion in granting a motion to preclude a defense **witness from testifying.**

A. SUFFICIENCY OF EVIDENCE TO PROVE ALL ELEMENTS OF INDECENT ASSAULT BEYOND REASONABLE DOUBT

Here, Student credibly testified that while she was alone with the Appellant at The University, the appellant began to touch her in different places including but not limited to the face, neck, and breast area. N.T. Trial, 8/16/22, at 39-47. Student further testified that the Appellant's penis was erect for the duration of the contact and that he was masturbating at one point, using Student's feet to stimulate his erect penis. *Id.* Furthermore, there is corroborating testimony from the prompt report witness describing events that led up to or immediately followed the incident in question.

Any alleged or perceived consent that the Appellant claimed to have was unfounded, unreasonable, and simply not credible. It is also contrary to the testimony and evidence offered by the Commonwealth. Appellant had neither questioned nor shed any doubt on any of the Commonwealth's evidence. The Court, as the finder of fact, found the witness testimony to be credible. In a finding of crimes being committed beyond a reasonable doubt, it is not required that the finder-of-fact dispel every possibility of innocence. It is not this Appellant Court's duty to substitute their own judgment for the weight of the evidence, but rather to see if in the light most favorable to the Commonwealth, there is sufficient evidence to enable the fact finder to find every element of the crime beyond a reasonable doubt.

A reading of 18 Pa.C.S.A. § 3126 (a)(1) states a person is guilty of indecent assault if the person has indecent contact with the complainant … and does so without the complainant's consent. The definition for indecent contact is provided by the legislature and requires touching of sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person. Appellant offered no alternative intent to why he touched the complainant's sexual and intimate parts. It was more than merely reasonable for the fact-finder here to find that the touching was done for the purpose of arousing and gratifying sexual desire in the Appellant as his penis was erect and at multiple points had masturbated over his clothes.

B. DEFINITION AND INTENT OF THE TERM "SCHOOL" IN CONTEXT OF INSTITUTIONAL ASSAULT

Appellant claims that the term "school" as used in the definition of institutional sexual assault does not apply to professors or teachers at a college or university. Appellant refers to the 2011 amendment of the statute, which added subsection (a.2). This section specifically defines institutional sexual assault in the school context as "a person who is a volunteer or an employee of

a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school."

When determining the definition of a term within a statute, the judiciary must first turn to the statute. If they are unable to discern a definition, the judiciary must then read the terms of a statute in accordance with their "plain meaning and common usage." *Commonwealth v. Love*, 957 A.2d 252, 256 (Pa. Super. 2008). 18 PA. C.S.A § 3124.2(A.2)(2iii) defines "school" as "a public or private school, intermediate unit or area vocational-technical school." As this definition does not shed light on the present issue, we must next turn to the plain meaning and common usage of "school."

The plain and common usage of the word school as used in *Commonwealth v. Lewis* describes children or people under college age. However, this case refers to the American Heritage Dictionary (4th ed) (2000) and inquires into the question of whether the term school applied to pre-schools in the context of the drug-free school zone provision of 18 Pa.C.S.A. § 6317 (held unconstitutional by *Commonwealth v. Hopkins*, 117 A.3d 247 (2015)). Merriam-Webster Dictionary includes colleges and universities in the definition of school. Black's Law Dictionary also defines "school" as "'[a]n institution of learning and education, esp[ecially] for children.'" *Id.*

Appellant's proposed interpretation of the definition of institutional sexual assault is dangerous. If a person who has direct contact with a high school senior engages in indecent contact with that student, that person commits institutional sexual assault. However, by way of appellant's reasoning, that same person would not commit any crime if that same student were to be a freshman

in college. This draws an arbitrary and dangerous line in the difference. Furthermore, it is contrary to the intent of the legislature which is to protect students from persons who will leverage their authority as an employee of the school to illicit sexual conduct.

C. LOWER COURT'S DISCRETION IN GRANTING COMMONWEALTH'S MOTION TO PRECLUDE DEFENSE WITNESS

The standard of review leads us to inquire whether the factual findings are supported by the record. The Superior Court may reverse the suppression court only if the legal conclusions drawn from those facts are in error. Appellant raises the question of whether their precluded witness would've had an effect on the fact-finder. In this matter, there was a waiver trial in front of this Court. The Judge was the ultimate finder of fact. Here, the Judge found the testimony of the commonwealth witnesses to be compelling.

Appellant further argues that the potential defense witness would've been qualified as an expert witness in piano performance. Appellant offers no grounds to support this conclusion, as the Court is ultimately the one who decides if a witness is qualified as an expert witness. Appellant states that the witness would've testified that, based on a video recording of the complaining witness' performance, she would've received a failing grade and would've not passed that particular class. Appellant argues that this testimony is relevant evidence as it would have supported the theory that the complaining witness fabricated these charges against the Appellant in order to secure a passing grade. Evidence must be relevant to be admitted. Here, the Appellant mistakenly assumes that all relevant evidence must be admitted.

Most importantly, the admissibility of this evidence would not have changed the course of the trial. Appellant fails to appreciate the nuisance of the crimes charged against him. Under the

institutional sexual assault statute § 3124.2 (a.2), two questions arise. First, whether the Appellant was a teacher at a school; and second, whether he engaged in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school. A review of the record finds an affirmative answer to both questions. Additionally, Appellant does not dispute that sexual contact occurred and even concedes it occurred. N.T. Trial, 8/16/22, at 58. Appellant's whole defense is consent; however, consent is not a recognized defense to institutional sexual assault.

For all of the above reasons, the appeal is without merit and the conviction and sentence should be upheld,

RACHAEL WOLFRAM, NREMT
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WRITING SAMPLE

The attached writing sample is a draft pretrial and settlement memo that I drafted as an assignment for my upper-level Negotiations class in the Spring of 2023. The assignment was to defend the actions of police officers charged with the usage of excessive force and settle the case out of court for the lowest figure possible. I performed all of the research and this work is wholly my own. All identifying facts and names have been altered for confidentiality purposes.

WOLFRAM & ASSOCIATES, LLP
BY: **RACHAEL L. WOLFRAM**
IDENTIFICATION NO:
123 Main Street
Philadelphia, PA 19103
(123) 456-7890
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

K.S. Plaintiff, vs. **OFFICER A.R., SGT P.A., OFFICER G.A., OFFICER S.E., OFFICER P.E., OFFICER T.U. ET AL.** Defendants.	**NO.**

DEFENDANTS' PRETRIAL & SETTLEMENT MEMORANDUM

I. DEFENDANTS' POSITION AS TO LIABILITY

On or about November 19, 2012, at 12:01 p.m., defendants Officer A.R. and Sergeant P.A. were on a private lot on the corner of 2nd Street and Edge Avenue in Town, Pennsylvania supervising tow truck driver, J.A., as he removed abandoned cars from the lot at the owner's request. One of these vehicles belonged to the plaintiff, K.S.**.** ***Plaintiff is approximately five feet and ten inches and weighed approximately three-hundred and fifty pounds on November 19, 2012. Plaintiff's vehicle had an expired license, an expired inspection sticker, and a flat tire on the passenger side.***

When J.A. was in the process of towing Plaintiff's vehicle, ***Plaintiff charged the tow truck and banged his fists so loudly on the truck's cab that the driver believed he had struck something with his vehicle. Plaintiff proceeded to scream profanities at the tow truck driver and accuse him of stealing Plaintiff's car. Plaintiff then proceeded to climb on the bed of the truck and yank at the straps securing the car's tires while continuing to scream profanities.*** J.A. tried to instruct Plaintiff to speak with the Officers on scene as well as explain what he was doing, but Plaintiff would not stop screaming obscenities and attacking the truck. ***Officer A.R., addressing Plaintiff as "sir," politely asked Plaintiff to get out of the street and speak with him on the sidewalk. Plaintiff continued to scream curses at the Officer and J.A. and strike the tow truck. Officer A.R. repeated his polite attempts to speak with Plaintiff as Officer A.R. and Sergeant P.A. had accommodated several of the vehicle owners by towing their vehicles to their nearby driveways rather than impounding them upon their request and were willing to do so for Plaintiff had he spoken with them.*** After repeated noncompliance, Officer A.R. took a step towards Plaintiff, which Plaintiff responded to by running towards his house and Officer A.R. gave chase. Officer A.R. approached Plaintiff as Plaintiff began to climb the stairs to the porch of his house. Officer A.R. reached out and placed one hand on Plaintiff's right elbow. ***Plaintiff then violently flung Officer A.R. over the railing, off the porch, and onto the ground, causing Officer A.R. to sustain physical injuries.*** Seeing Officer A.R. injured, Sergeant P.A. stopped his pursuit to render aid to Officer A.R. and requested additional Officers. Following this, both officers returned to Plaintiff's porch and requested Plaintiff to open the door, which Plaintiff had locked behind him. ***Officers repeatedly attempted to enter the house utilizing the doorknob but were unsuccessful due to Plaintiff's noncompliance with their request to unlock the door.*** Police were able to make entry after kicking the door open, in accordance with protocol, after